Supreme Court, U.S.
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In The

Supreme Court of the United States

United States of America, and;
State of California, and;
ex rel. Miro J. Satalich,
Petitioner(s),

v.

City of Los Angeles
Respondent.

On Petition For Writ Of Certiorari to the United States Court of Appeals for 9th Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

(I) As respects Title 31 U.S.C. §§ 3729 et seq. discovery in a qui tam action. Did the District Court Judge error, by making an impossible ruling requiring the Plaintiff to prove fraudulent funds paid out by the City, while in the same breath denying and barring Plaintiffs/Appellants discovery to public records/accounts of the City of Los Angeles containing Grant Funds paid to them by the Federal Government and State of California? Did the City obstruct justice?

(II) When the Defendant is being Court supervised for over (20) twenty years, by the same Appellate Judge, under a Consent Decree and/or ACD, and federal funds are used, when does Title 31 U.S.C. § 3729 et seq. , statute of limitations start to run? Does Title 31 U.S.C. § 3730(e)(3) apply?

(III) Did the District Court, and Ninth Circuit Three Judge Panel error by not acknowledging, a continuing offense of accrued Title 31 § 3730(h) violations of falsified documents and perjury to establish statute of limitations?

(IV) Did the District Court Judge, and Three Judge Panel error by denying the Plaintiff to file a "Supplemental Complaint?"

(V) Are Ninth Circuit procedures, that are unpublished, unapproved by Congress, and the U.S. Supreme Court, that treat just Pro se litigants differently, un Constitutional?

(VI) Since the City of Los Angeles has stonewalled and intentionally withheld subpoenaed public records, and upon motion, was not compelled by the Court to produce, and since the City of Los Angeles has been in perpetual default, is the Appellant entitled to "Default Judgment" by this Court?

PARTIES

United States of America, and; State of California, and;
ex rel. Miro J. Satalich

Petitioners,

v. CV-00-08882-GAF-(PLAx)

City of los Angeles

Respondent.

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Petitioner Miro J. Satalich respectfully prays that this Court grant a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered on September 23, 2005, Docket No. 4-57163.

OPINIONS BELOW

The September 23, 2005 **Opinion** and **Mandate** issued on October 25, 2005 of the 9th Circuit Court of Appeals is set out on pages **1a and 3a** at **Appendix A and B**.

JURISDICTION

The decision of the 9th Circuit Court of Appeals was entered on September 23, 2005. The jurisdiction of the Court is therefore invoked pursuant to Title 28 U.S.C. § 1254.

STATUTES AND REGULATIONS INVOLVED

In accord with Title 28 U.S.C. §§ 1253, and 2101(e), and this action being a Title 31 U.S.C. § 3729 et seq., and § 3730(h) being a Congressional Act, involving alleged fraud of government grant funding, and employee harassment thereby falls squarely under U.S. Supreme Court Rule 11. Also, alleged violations of the Appellant's 1st, 5th, 7th and 14th Amendments to the U.S. Constitution; Sections 7 and 15, of the State of California Constitution; Title 28 U.S.C. §§ 47, 291(b); Cal. Labor Code 132(a); and City Ordinance #168708.

Title 28 U.S.C. § 1654 of differential and discriminatory treatment by the District and Ninth Circuit Appellate Court, for using unpublished, unapproved by Congress and U.S. Supreme Court procedures that are contrary to just pro se litigants, as well as contrary to the U.S. Constitution, Statute, Federal Rules of Civil Procedures, Federal Rules Criminal Procedures, and Federal Rules of Evidence.

STATEMENT OF THE CASE

Appellant was employed by the City of Los Angeles from March 30, 1987, to June 22, 2000, at the City of Los Angeles, Hyperion Wastewater Treatment Plant, 12000 Vista Del Mar, Playa Del Rey, California 90293.

The City of Los Angeles Hyperion Wastewater Treatment Plant (HTP), was a run down, neglected, undermanned, environmental disaster. In 1977, the City of Los Angeles (CLA) and State of California were sued by the United States of America, Environmental Protection Agency (EPA) and various private environmental groups, namely, Santa Monica based "Heal the Bay" due to discharging untreated sewage and wastewater into Santa Monica Bay and for lack of maintaining the large facility. The results of the suit were a Consent Decree Order, signed on **June 19, 1980** by then, **District Judge Harry Pregerson**, which led to an Amended Consent Decree (**ACD**), again signed **February 19, 1987** by **Appellate Judge Harry Pregerson** , who, although an **Appellate Justice**, was **supposedly** allowed to retain and overlook the case in it's entirety, as the administrator, until he closed it on **August 7, 2000**.

The estimated cost of updating HTP was 2.5 billion dollars. Monies came in the form of U.S. Super Funds and Grants from the United States of America, Environmental Protection Agency (80%), and the State of California (10%), and with The CLA contributing about ten percent (10%). Eighty percent (80%) of funding was provided by grants from the United States Department of Justice, Department of Interior, Environmental Protection Agency, Superfund. Ten Percent funding provided by the State of California. Ten percent matching funding by the City of Los Angeles, through public sewer tax. **Alleged training fraud** occurred on the first training contract to Metcalf & Eddy Services, $13,000,000.00.

Second Training contract to Metcalf & Eddy Services, $3,500,000.00. MCS contract to oversee Metcalf & Eddy, $130,000.00. per year. MCS Training Group contract for C-109 project, $2,800,000.00. Approximate contracted Training costs, totaled $20,000,000.00. All training contracts were allegedly done fraudulently. All monies were placed in a trust fund under the control of then elected city official, Rick Tuttle, City Controller, then disbursed by his office on approval of all training contractors by the Bureau of Sanitation via Hyperion HRDD managers.

On or about October 1990, the Appellant transferred to Hyperion's Human Resources Development Division (HRDD), Training Section, to be part of the Hyperion Plant training staff. Further, the Appellant alleges that after witnessing and detecting and reporting training fraud and waste to City government pertaining to the Federal Court Ordered Amended Consent Decree (ACD) Case #77-3047-HP), which happened prior to October 28, 1991, that started with a breach of confidentiality from a plant manager, he **was harassed**, which continued thereafter. Hyperion and HRDD management knowingly and intentionally harassed, threatened, intentionally falsified, and published false records pertaining to the Appellant's work records to take steps to fire him and discriminated against him in direct violation of: (a) State Labor Codes, (b) City Ordinance No. 168708, SEC 49.5.4.(A)(B)(C)(D), and (c) 31 U.S.C. § 3730(h), and, (d) violated Appellant's First, Fifth, Seventh and Fourteenth Amendments to the United States Constitution. (e) The Long Beach WC Appeals Board Clerk failed to forward Appellant's appeal to the State Appellate. The one year statute of limitations ran out and the WC Chief Judge said that was "too bad" that the Clerk made a mistake. The U.S. District Court Judge never got around to hearing that part of the complaint.

On My 10, 1995, due to job harassment for whistle-blowing activities, the Appellant became seriously ill and had to leave the work place and be placed under doctors care. From May 10, 1995, to June 22, 2000, the Appellant was denied Workers' Compensation benefits, as the City claimed they did not damage him. The Appellant contends, that while not at his work place from 1995 to 2000, evidence provided by the **Defendant** clearly established that the **Defendant published** false statements to the California Workers' Compensation Appeals Board, and to the California Department of Fair Employment and Housing to further punish the Plaintiff for refusing to commit illegal acts as a condition of employment. As a result of the forgoing, on June 22, 2000, with the knowledge that he had been repeatedly slandered and that his reputation and abilities had been severely tarnished by Hyperion management for his refusal to go along with, which he believed was an illegal program to defraud Hyperion employees of badly needed training and at the advice of the Plaintiff's treating physician (who stated that Plaintiff's health was in jeopardy as a result of the ongoing harassment and hostile work environment created by the Defendant), was constructively discharged by being forced to retire/resign.

The Appellant believes, that because of the language of Title 31 U.S.C. § 3730(e)(3) "**Certain actions barred**," and being overseen by Appellate Judge Harry Pregerson, he could not file an action because of being in conflict with the ACD, see footnote[1]. The Appellant believes this to mean, barring anyone from filing a Title 31 U.S.C. 3729 et seq., action, while

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[1] Title 31 U.S.C. § 3730(e)(3) "Certain actions barred" — "In no event may a person bring an action under subsection (b) which is based upon allegations or transactions which are the subject of a civil suite or an administrative civil money penalty proceeding in which the Government is already a party."

the United States was still the Plaintiff in CV-77-3047-HP, and the ACD. However, On March 19, 1999, the Appellant filed a Title 31 U.S.C. § 3730(h) Motion and Complaint of Intervention into CV-77-3047HP, butwas ignoredby Appellate Judge Harry Pregerson, and the City did not respond. The Appellant made numerous inquires with the Court Clerk and directly to Judge Pregerson, but, to no avail or response. The Appellant contacted the U.S. Department of Justice, whereas, they were investigating the Appellant's complaints, and as noted in the record, while they were still writing reports to the CV-77-3047HP Court. After consulting with the USDOJ and checking the case status with the Court Clerk, the Appellant on August 7, 2000, filed a full blown qui tam intervention into CV-77-3047HP. However, after being filed ... seven days later, Appellate Judge Pregerson closed CV-77-3047HP and backdated to the same day as filed by Appellant, August 7, 2000. On August 22, 2000, the Appellant filed a new action, case number CV-00-08882GAF(PLAx). The Appellant was later contacted by Judge Pregerson's Court Clerk, to the effect, that the first 31 U.S.C. § 3730(h) intervention was still pending, but apparently the documentation was lost and to re file original documents directly to him. The Appellant complied, and waited for over a year with no response. Because of the City and Court not responding to the motion, the Appellant filed for Default, and Default Judgement, only to be rejected by Appellate Judge Harry Pregerson, and told the case CV-77-3047HP was closed on August 7, 2000.

The Appellant has gone through well over four years of litigation with the major qui tam argument being whether a municipality was a person. On 6/09/2003, Judge Feess dismissed all causes. Due to ***Cook County v. United States ex rel. Chandler, 123 S. Ct. 1239 (2003) U.S. Supreme Court No. 01-1572***, CV-00-08882GAF was reinstated. Through stipulation, the City agreed to discovery. The City failed to

produce, and when finally did, withheld, with Court approval, critical public records containing Federal and State grant monies in the "Environmental Trust Fund" records.

REASON FOR GRANTING THE WRIT

The Appellant:
(1) Was denied access to public records containing federal grant funds to prove a § 3729 action; Records that should have been available even under the Freedom of Information Act. The Appellant believes he proved statute of limitation, however, the District and Appellate did not rule on the matter.

(2) Was denied filing a "Supplemental Complaint;"

(3) Was denied by the Court, the use of submitted evidence to prove § 3730(h) harassment, of accrued continued offense that occurred from 1991 to the year 2000;

(4) The Appellate and District Courts **failed to acknowledge** violations of Appellant's Constitutional Rights. Also;

(5) During the appeal process of Docket No. 04-57163, the Appellant happened across files on the 9th Circuit Court of Appeals website, that being, **discriminatory Court procedures towards just pro se Litigants**. Found, by chance, were **compelling**, **unavailable to the public**, **unapproved**, **unpublished Ninth Circuit procedures**, which are **contrary** to Federal Rules of Civil Procedures, Federal Rules Criminal Procedures, and Federal Rules of Evidence residing on the Ninth Circuit's website, proving differential treatment by the District and Appellate Courts towards just pro se litigants. The newly found evidence proved, that pro se litigants, under all circumstances, are being scrutinized differently than attorneys, to never prevail in federal court.

(6) In over four years and 191 Docket Entries, the Appellant was not allowed one minute of court time for oral argument.

(7) The 9th Circuit Court of appeals record shows, the Three Judge Panel of **Stephen Reinhardt, Pamela Rymer, and Michael Hawkins** supposedly heard **fifteen (15) cases** on September 23, 2005, two being the Appellants. See footnote[9]. The very fact that many cases were heard without oral argument, proves Dr. Heckman's point of 9th Circuit abusive **rubber stamped** dismissals of pro se civil litigants as **being true**.

(8) **Appellant's undisputed evidence** (Exhibit G-3) proved, that from 1991 to date, **Appellate Justice Harry Pregerson, who was overseeing CV-77-3047HP and was fully aware of the fraud and harassment being committed at Hyperion, yet remained silent**. **Court Docket Record shows, that Judge Pregerson closed the case while Appellant's harassment complaint was being investigated by The U.S. Department of Justice**. Moreover, District Judge Gary A. Feess was also fully aware of this evidence, yet ignored it, and ruled to dismiss. As shown on **Docket entry No. 43 and 44**, Judge Gary A. Feess, in fact attempted to transfer CV-00-08882GAF to Appellate Judge Harry Pregerson! Because of visible perception of partiality throughout CV-00-08882GAF, the Appellant filed under Title 28 U.S.C. §§ 144, and 455 to have Judge Gary A. Feess twice step down, which he twice refused to do as he passed Appellants request to a peer judge for review, who supported in his favor. Appellant appealed Judge Feess's removal to the 9 th Circuit under Docket #04-56758, with the Appellate citing Title 28 U.S.C. §§ 144, and 455 but again, stating, not appealable. Finally, all of the above were appealed to this Court under No.: 04-1420, wherein certiorari was also denied.

QUESTIONS PRESENTED TO THE COURT
I.

As a result of *Cook County v. United States ex rel. Chandler, 123 S. Ct. 1239 (2003) U.S. Supreme Court No. 01-1572*, CV-00-08882GAF, was reinstated on 08/11/2004, however, the City raised the issue of " statute of limitations." The Appellants responded and believed proved "statute of limitations," however, th` defendant, after over four years of stalling, raised yet another erroneous issue of funds not being federal grant monies paid to contractors, the Court set aside statute of limitations without responding and went to the City's new issue.

The Record shows that the Appellant were placed into an impossible and untenable position of proving a case without being granted discoverable access to City Controller's "**Environmental Trust Account**," that of containing Federal and State grant funds. Judge Feess's dismissal of CV-00-08882GAF was based on a declaration, from a non elected unaccountable person, and not from the elected City Controller who controlled those mentioned public funds/records.

See footnotes CV-00-08882GAF docket entries #123[2], and #124[3]. Please make note of the purpose of the stipulated discovery, that being for "statute of limitations," and nothing else being mentioned.

By March 1, 2004 the City of Los Angeles failed to produce documents. The Appellant filed motions for the City and third parties to compel, however, were denied by the Court, yet Judge Feess maintained his calendared schedule.

According to the record, and dates, the City was purposely late in discovery and in default. When they finally did produce documents, they intentionally withheld records, most pertinently from the "**Environmental Trust Account**" as mentioned by the CV-77-3047HP Court for the City

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10/06/2003 **123** MINUTES: scheduling conference held . "The court orders limited discovery be conducted as to the subject of materials relating to the statute of limitations question. This discovery is to take place within the next 90 days. If a motion is to be filed regarding the statute of limitations, it is to be filed not later than February 9, 2004, opposition to be filed February 23, 2004, with a reply due March 1, 2004. This matter will be heard on Monday, March 8, 2004, at 9:30 a.m. by Judge Gary A. Feess "CR: Lisa Gonzalez (bp) (Entered: 10/07/2003)

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12/30/2003 **124** "STIPULATION and ORDER that the City shall serve its responses to Satalich's requests for production of documents and things, set one, and special interrogatories, set one, no later than March 1, 2004. The City shall file any motion relating to the statute of limitations issue no later than April 12, 2004. If a motion is filed, Satalich shall file any opposition no later than April 26, 2004. The City shall file any reply no later than May 3, 2004. If a motion is filed, it shall be heard on Monday, May 10, 2004, at 9:30 a.m. by Judge Gary A. Feess" (bp) (Entered: 12/31/2003)

Controller's Office to accept and disburse Federal and State of California grant monies. Because the District Court placed an impossible burden of proving the defendant's new issue, the Appellant filed a motion to reopen discovery, specifically aimed at the City Controller's Office to have, at the expense of the Appellant, the "**Environmental Trust Account**" be audited by a **Certified Public Accountant**. The Court denied all motions and objections, and/or enforcement of subpoenas without oral argument, yet insisted the Appellant prove, **without access to City Controller's records**, that Hyperion ACD contractors were paid with federal grant funds. **Note to the Court**: Although the City provided very limited documents of their own choosing, the Appellant did find enough additional discovered documentation to merit filing a " **Supplemental Complaint**," which was also denied by Judge Feess. Therefore, **four questions** before this Court:

Since the Defendant raised the issue, then did not produce subpoenaed records:

(1) Did the District Court error and/or **overreach it's authority by barring** the Appellant's access to City Controller's **public records**, controlling Federal and State grant monies, to prove a Title 31 U.S.C. § 3729 et seq. action, and;

(2) Did the Court also error in**not accepting** the Appellant's **Supplemental Complaint**?

(3) **Is the City in default**?

(4) **Did the City obstruct justice**?

II.

The Appellant believes, that the language of Title 31 U.S.C. § 3730(e)(3) is not ambiguous and very clear see footnote [4]. The Appellant believes that since the City of Los Angeles was already in a law suit with the U. S. Government and thereby under direct Court supervision, that by the very language of the Act, barred anyone from filing a Title 31 U.S.C. § 3729 action. Therefore, the question before this Court is:

Since federal and state funds were used, and since the project was under Court supervision with a Consent Decree, (a contract between the U.S. Government and City of L.A., that being administrated by the Court) for over (20) years until the project was completed, when does the statute of limitations start to run?

The Appellant believes, statute of limitations should start to run on **the date the Court closed the case**. In this instance, on August 7, 2000. Also, since a Consent Decree is a Court contract between two parties, and being supervised through all steps by the Court, the government should not be deprived from recovering defrauded monies that occurred during the life of the contract. **Therefore, due to the length (20 years) of the ACD contract, the Appellant contends, that tolling should start on the date the Consent Decree was signed, and conclude on the date the case was closed**.

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"U.S.C. § 3730(e)(3) Certain Actions Barred.
In no event may a person bring an action under subsection (b) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the Government is already a party."

Further the District Court stated, that the Appellant has no right to enforce the consent decree. The Appellant believes this to be an erroneous ruling. Because of state and federal funds being used, should fall squarely under Title 31 U.S.C. § 3729. A court supervised consent decree, should not be a pass to fleece the Government of tax dollars, nor to break the rule of law.

III.

First: The City **did not deny** the Appellant was **harassed with falsified records from 1991 to 1995**, nor deny they violated his **First Amendment Rights**, or all parts of City Ordinance No.: 168708. However, the **District Court**, sua sponte **did not acknowlege two critical pieces of evidence that would have established a one year statute of limitation**, and continuous offense for a 31 U.S.C. § 3730(h) claim, that occurred on August 10, 1999, and mid April 2000. The Appellant disagrees. The first piece of evidence was generated on January 6, 1996, by City Hyperion Managers, unbeknown to the Appellant while at home under doctors care. (Noted as Exhibit F-10). **Then was illegally entered into evidence in the Appellant's Workers' Compensation trial on August 10, 1999**. The Appellant claims, that as a City of Los Angeles civil service employee, the evidence was in direct violation of his "Fifth and Fourteenth Amendments to the U.S. Constitution, and Sections 7 and 15, of the California Constitution" of well established and settled case law of civil service employee's "**Skelly**" rights.

The Appellant contends, that City Hyperion managers **violated all of his "Skelly" rights** , whereas, he was never notified or had knowledge of the proposed discipline until the document surfaced illegally in his WC trial on August 10, 1999 by the Defendant's attorney. The Appellant further contends, that aforementioned proposed discipline document indicates,

that it was spread throughout Hyperion in various departments' files including his own personal employee file, in direct violation of Appellant's Union Memorandum Of Understanding (MOU) regarding the indiscriminate placing of disciplinary documents in an employee's file without his/her knowledge, or right to challenge or appeal. The City of Los Angeles violated this procedure, by entering this document into a legal proceeding (**W.C. trial**) without prior knowledge of the Appellant. In doing so, violated Appellant's Fifth and Fourteenth Amendments to the U.S. Constitution, and 7th and 15th Sections of the California Constitution. See footnote [5]

Second: The City of Los Angeles Bureau of Management Employee (BMES), employee, Ron Goree obviously perjured himself in a "interrogatory," thereby establishing the nexus of the City's continuous offense of

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[5] *John F. Skelly v. State Personnel Board, et al, S.F. 23241 Supreme Court of California, en Bank September 16, 1975, 124 California Reporter 539 P.2d 774, 15 Cal.3d 194.*

The California Supreme Court has determined that public employees have certain due process protections on the job. In a landmark case, in the Skelly case, the Court ruled that public employees are entitled to a "pre-disciplinary hearing."

This means that an employee must be given a written notice of proposed disciplinary action. The notice must include:

a) a statement of the nature of the proposed discipline
b) the effective date of the proposed discipline
c) the reasons for the discipline
d) the specific policy or rule violated
e) a statement advising the employee of the right to respond orally or in writing.

untruths and lying in all legal investigations, hearings, and legal proceedings, that started in **1991 thru the year 2000**.

[Noted as Exhibit G-1] Based on harassment and civil rights violations, the Appellant filed a State of California EEOC complaint against the City of Los Angeles (Case No.: **E-199899-S-1080-00pe**). In the State's investigation of **May 18, 1999**, the State issued the City "Department's First Set of Interrogatories and Request for Inspection and Copying." Interrogatory number 2 states: "No. 2: Was the Complainant ever subjected to any form of disciplinary action while employed by Respondent? If your answer to this interrogatory is in the affirmative, please state with reference to each occasion on which the Complainant was the subject of any form of disciplinary action:

a. The date of the disciplinary action;
b. The reason for the action; and
c. The form of the disciplinary action."

[Noted as Ex. G-2] Interrogatories response from the City, letter dated **August 24, 1999**, to: Susan Harris, DFEH. From: Rod Goree, City of Los Angeles, EEO and Employee Division. Read Interrogatory No. 2, as relates to same question of [See Ex. G-1] RESPONSE:

> "Answerer has no information that Complainant was the subject of any disciplinary action by the Department of Public Works."

After being months late to respond with impunity, Mr. Goree told untruths. Besides conflicting with [Ex. F-10] and all past harassment complaints filed with all other city departments, Mr. Goree failed to disclose, in his response, that he had access to secret city employee records being maintained by the City's Bureau of Employee Management Service

(BEMS). Hence, to defeat the Appellant, however, clearly perjured himself.

The Appellant **did not give any input** into [Ex. G-1], **nor did he see** [Ex. G-2], until well after the fact in mid April 2000. Upon numerous requests, the State of California sent documentation but not until **mid April 2000**. That was the first the appellant had knowledge that Mr. Goree lied. **The Appellant proved this point with the District Court with submitted supplemental evidence, in a declaration dated October 3, 2001, entered as Docket #70**, which was also not acknowledged by the Court.

Further, the Nexus Between Mr. Rod Goree, Ms. Uta Hughey, and Ms. Ingrid Herda, is that they are all tethered to the City's BEMS, where City of Los Angeles employee records are secretly filed and stored. The access to BEMS records is not mentioned in any City Directives, Policies, or Union MOUs, clearly, an illegal act. Submitted evidence, proved a conspiracy by Mr. Goree, Ms. Herda, and Ms. Uta Hughey, who were, in fact, assigned to track the Appellant.
Ms. Hughey was also named in the Complaint on [Page 12, lines 3 and 8. Page 19, line 22. Page 20, line 27. Page 21, line 18. Page 22, line 18]. Therefore, for Mr. Goree to state: "Answerer has no information that Complainant was the subject of any disciplinary action by the Department of Public Works," **is a blatant perjurious lie**. Based on evidence presented of a "**continuous offense**" that has accrued from 1991 to mid April 2000; and based on submitted prima facie evidence presented to the Court of a false document entered into a legal WC proceeding, then a perjured statement in a State of California investigation, the Appellant asserts that he had

easily met all one year statutory requirements (see footnote[6]) to file a Title 31 U.S.C. § 3730(h) complaint on August 22, 2000, exactly 15 days after CV-77-3047HP closed. The Appellant further asserts that in accordance with the Seventh Amendment to the U.S. Constitution, should be entitled to present all pre-filed material evidence to a jury.

IV.

"Did the District Court Judge, and Three Judge Panel error by denying the Plaintiff the filing of a Supplemental Complaint?"

Statement of Claim: (See ***Sierocinski v. E.I. Du Pont Nemours & Co., 1939***). The Plaintiff alleges: That the City made definitive design changes contrary to already established world wide Carver Greenfield processes that impacted and compromised the Hyperion Energy Recovery System. Further, the result of the failure of the Carver Greenfield process impacted the Sludge Combustion facility, mainly the C-11 Flare Gas, Steam and Gas Co-Generation Turbines, and HTP C-11 emergency power backup system. Further, after being de-commissioned in 1995, the City made no attempt to safeguard installed equipment, in the C-8 Carver Greenfield facility that belonged to the United States and State of California. Moreover, the Plaintiff is informed, believes and alleges, that the City spent $500,000,000.00, on Carver Greenfield, and $700,000,000.00, on the C-11, C-10 projects and then de-commissioned, and sold equipment just prior to the close of the ACD and CV-77-3047HP, thereby leaving Hyperion **without a backup power system**, that was once had, before and during reconstruction. (Also see: ***Conley v. Gibson, 1957***)

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[6] *Graham County Soil & Water Conservation District et al. v. United States ex rel. Wilson, SCOTUS, No. 04-169. June 20, 2005*

Public Disclosure, and Original Source (see 31 U.S.C. § 3730(e)(4)(B). The plaintiff claims to have made no "**public disclosure**" of, and claims to be the "**original source**." The City of Los Angeles is a "**person**"(see ***Cook County v. U.S. ex rel. Chandler***), and 31 U.S.C. § 3733(l)(4).

Statute of Limitations: NA. CV-00-08882GAF was filed on **August 22, 2000**, 15 days after CV-77-3047HP closed.

SUPPLEMENTAL COMPLAINT BACKGROUND

Refer to ACD page 8 (000033)V, Titled "**COMPLETION OF THE HERS PROJECT**." The C-11 Co-Generation facility was built to replace the older Power and Blower facility. As obsolete and antiquated as Power and Blower was, it still provided enough backup power to keep Hyperion reasonably functioning. The old Power and Blower generators turned by using methane gases collected from plant sewage. Space was needed for Hyperion's full secondary, so C-11 Co-Generation (CGN) was built to replace Power and Blower, which was torn down. CGN was the last link in the overall Hyperion Energy Recovery System (HERS). CGN had two Steam Turbines, and Four Gas Turbines. Carver Greenfield received wet sludge from C-7 Centrifuges, and went through a complex process of removing the remaining liquids, then dried the sludge, and added oil to make it burn. The processed sludge was made into pellets, then a fine powder, and sent to C-10, Sludge Combustion. At Sludge Combustion the powder was burned to heat water and provide steam for the two CGN Steam Turbines. CGN's four Gas Turbines were fed from the Gas Compressor Facility, which collected gases from the HTP massive Digesters.

Turbine Capacities:

STG1,	17.5 0 MVA	15MW,	13.5KV 3⌀ .85PF
STG2,	3.4 MVA,	3MW,	4.8KV 3⌀ .85PF
GTG1,	5.5 MVA	4.67MW	4.8KV 3⌀ .85PF
GTG2,	5.5 MVA	4.67MW	4.8KV 3⌀ .85PF
GTG3,	5.5 MVA	4.67MW	4.8KV 3⌀ .85PF
GTG4,	5.5 MVA	4.67MW	4.8KV 3⌀ .85PF
Total	43.8 MVA	40MW	

CGN's Steam and Gas Turbines were more than adequate for emergency power at Hyperion without external power needed, or to be used as a sole standalone power source.

APPELLANT'S BACKGROUND: The Appellant worked as a Wastewater Electrician I, and II throughout Hyperion, in all facilities. He also ran a night shift to keep the Plant running during critical times when there were frequent power outages. He eventually was transferred to the Hyperion Human Resources Development Division (HRDD) to train HTP and Bureau of Sanitation employees. At that time he also developed and wrote instructional lesson plans. Written, were notably the "**C-11 Power Distribution**", and last, before being transferred back to Maintenance, a worst case scenario, "**Plant Power Failure**." This lesson plan was of utmost importance, because it went into great detail, of what was expected of HTP personnel in the event of a worst case scenario, that of a **natural disaster, or terrorist attack**. In the event of power loss, should HTP be down to zero, or flashlight power, the City built what was called, the Power Restart Facility. This facility had two 1750KW, 4800Volt Diesel Generators. By manually opening switches and prioritizing vital equipment, there would have been enough power to power fail-safe equipment. But mainly, Power Restart would be used to start the GTGs, to get HTP back to normal, without outside power or help. The Plaintiff is informed and believes that is no longer possible, as

all of the Gas Turbine Jet engines allegedly, have been **sold to Canada,** and other parts for scrap. Also, the Plaintiff is informed that the CGN Control Room is no longer manned. The Plaintiff is informed and believes that after spending 1.2 billion dollars of taxpayer monies on HTP's Energy Recovery System, there is now, **no longer a system in place to power the plant, in a worst case scenario, yet alone in a best case scenario**.

The Appellant is informed and believes, that given the facts of the Carver Greenfield failure, that should not have given the City an excuse to gut CGN, which compromised the only source of **backup power available within the plant, and wasted 1.2 billion dollars of tax monies**.

Furthermore, refer to ACD, page 12 (000038), line 3, "a complement of staff which is not less than 90% of the numbers specified of the following categories: "Section Personnel Operators192, Maintenance 268. Engineers, Administrative Service, and Laboratory 89." The Plaintiff is informed and believes, that contrary to the ACD, this level is now at 50% of the above figures.

Plaintiff noted per Exhibit F-3, dated March 25, 1995, and Exhibits F-16, 17, and 18, and together with noted **Declaration of Lisa B. Mawery, dated April 12, 2004 stating that C-8 and C-10, C-11, were all partially (80%) federal funded projects**.

The Appellant believes he followed the Federal Rules of Evidence, Judicial Notice: Rule 201, (d)(f), the Federal Rules of Civil Procedures Rule, 15(d), Supplemental Pleadings, Local Rule 6-1 Notice and Service of Motion, and Local Rule 15-1 Lodging - Separate Document to merit filing a "Supplemental Complaint." **Yet, Judge Feess denied all**

motions and filings.

Therefore, given the facts, the Appellant requests this court **remand**, and Appellant be allowed to submit a "supplemental complaint" to recover U.S. and State treasury monies squandered by the City of Los Angeles.

V.

While doing a search on the internet, the Appellant inadvertently ran into documentation on the 9th Circuit Court website. Because of the files being so very large, wordy, and lengthy, the Appellant has submitted **bits of files** from the "**Handbook**" **in part**, that clearly show, the 9th Circuit has in place a system just for pro se litigants that discriminates, en mass. The procedures in the "**Handbook**" are **unpublished, unapproved by Congress**, and the **U.S. Supreme Court**. Pro se litigants, civil and criminal are being separated from attorneys, must file documents in a separate filing room and window. Then according to the **Handbook**," are flagged, and tracked by, and ruled on by a **Court staff attorney** and **paralegals**. The Appellant further asserts, the unpublished to the public procedures are directly **contrary to the U.S. Constitution**, and are **additional rules** to the FRCiv. P, FRCrim. P, and FRE, **just for pro se litigants**. In all appearances, the intent of the Ninth Circuit Task Force was honorable, however, not so. Files found and show that Chief Judge Mary Murphy Schroeder **set up her procedures way ahead** of requested public input. **See Appendix C, D, and E**.

Also found, was a 9th Circuit file by Dr. Heckman titled: "**Comments on the Ninth Circuit pro se Task Force Report**." **Please thoroughly read Appendix F** by Dr. Heckman, because his comments corroborated the Appellant's filed objections in CV-00-08882GAF, that Judges Harry

Pregerson and Gary A. Feess followed to a "Tee" and discriminated to ensure this pro se litigant's evidence never reached the light of day. Dr. Heckman's comments further proved, that civil pro se litigants are being discriminated en mass, without recourse, or without **even knowing why**. In other words, our money is good for filing, but we'll never get into the door of justice to be properly heard, nor no matter what the merits, will ever be allowed to win. **See footnote** [7], and **Appendix E**. Further, why is a Court staff attorney and paralegals employed by the Appellate Court making decisions, rulings, and recommendations to the Court, unbeknown to the pro se litigant without input or recourse? Also, to prove differential treatment, for example, the Defendant was allowed to enter into the record, by the **District Court** (Docket numbers 133, 134, 136, unsigned, unattested to proof of service, as well as, on May 16, 2005, **the Appellate** accepted the City's opening brief signed by their counsel, however, proof of service was unattested and unsigned. Moreover, the record the District Court disallowed numerous motions, and filings. **Appellant's filed objections** were meaningless, because according to Dr. Heckman's statement, it won't matter anyway, because:

> "Missing from the report by the Task Force is any adequate remedy for the actions of judges who adhere to the belief that pro se litigants do not deserve full consideration by the court. This can be justified by the self-fulfilling

---

[7] **"(3) Post-Briefing Dispositions**

(a) Summary Disposition Upon the initial review of all civil pro se appeals, the Pro Se Unit attorney identifies appeals that may be appropriate for summary disposition and monitors those appeals for the filing of the opening brief and for presentation to a motions panel. Alternatively, the attorney will issue an order directing the appellant to show cause why the judgment should not be summarily affirmed."

This can be justified by the self-fulfilling prophesy that pro se litigants never win."

The evidence garnered from the Ninth Circuit, and Dr. Heckman was submitted to the 9th Circuit in the form of a CDROM which overwhelmingly proved to the Court that judicial bias and/or prejudicial mistreatment not only by the 9th Circuit, but from the District Court, and from **a Circuit Appellate Judge who was supposedly sitting temporarily, for over 20 years, on a district court case**, administering same, as being true. **The 9th Circuit denied entry of their own unpublished procedures**. The Appellee made the outrageous statement in his brief, that the Appellant was properly treated in all phases of the litigation. The Court record, along with files obtained from the 9th Circuit web sites (**Handbook**) by the Appellant proves an altogether truer picture of differential and disparaging treatment. **See Appendix E**.

According to Federal Rules of Evidence, the Appellant believes he has a substantive due process right to have 9th Circuit unpublished or unapproved by Congress and U.S. Supreme Court procedures on pro se litigants entered and admitted for review for discrimination in this case. The Appellant **asked repeatedly for oral arguments**, paid for three appeals in this case, and has been denied three times. Under the U.S. Constitution, and statutes, the Appellant expected and deserved "**Article III**" federal judges to fully review and hear his appeal. However, **Court staff attorney and paralegals, complete their review process for the purpose of disposing of pro se case loads, and for no other reason**. Also, disallowing Appellant to be present for oral arguments. If an attorney can argue their case in open court, then why doesn't the same apply to me? One can only assume, that being pro se, you will never be treated judicially fair, or have a fair hearing

with oral argument, let alone to prevail! **Something is terribly, terribly wrong**?

This isn't the first time discrimination by the 9th Circuit Court has occurred. On June 15, 2001, the Appellant sent to all Justices of this Court a letter titled "Ninth Circuit Court of Appeals Pro se handbook for District Courts." The demeaning pro se manual showed where civil and criminal litigants were heaped together into the same sentences and paragraphs. In a nutshell, setting in place a negative judicial mind-set that all pro se litigants are cut from the same cloth, and don't deserve the time of day, let alone courtroom time. The 9 th Circuit removed the manual, however, now have in place an unpublished, and even more repressive, and discriminatory set of procedures.

Therefore, according to the 9th Circuit "**Handbook**", why are "Court staff attorneys and paralegals" being substituted for review process and disposition of pro se case loads, unbeknown to pro se litigants, instead of **"Article III"** judges?

VI.

Final Question: See *Coleman v. City of Frierson (1985)* Since the City of Los Angeles has stonewalled, and has intentionally withheld subpoenaed public records, and, upon motion, was not compelled by the Court to produce or reopen discovery, has been in ***perpetual default***, and since the same questions were presented to the 9th Circuit Court of Appeals, and were denied, then, as an alternative, after review, can this Court in accord with Federal Rules of Civil Procedures, Rule 55, and Federal Rules of Evidence remand back to the 9th Circuit to issue a writ of mandamus/opinion awarding ***Default Judgment to the Petitioners***?

VII.
CONCLUSION AND PRAYER

In conclusion, the Appellant's prays that the High Court accept to hear all arguments, and rule **not to accept falsified evidence and perjury** as a legal norm or standard.

As a result of denied discovery, remand discovery be reopened, at the expense of the Appellant for audit by a Certified Public Accountant, of all public records containing federal grant funding, namely, but not inclusive of aforementioned "Environmental Trust Account" for CV-77-3047HP. or;
As a result of the City of Los Angeles being allowed to be in perpetual default, **remand back to the 9th Circuit award for the Plaintiffs' "Default Judgment**," for CV-00-08882, less the "**Supplemental Complaint**."

Be allowed to re-file a "**Supplemental Complaint**." and;

As a result of false evidence, and perjury that established one year statute of limitations, remand to present to jury for determination of all pre-filed evidence for a Title 31 U.S.C. § 3730(h) claim. and;

As a result of entering false evidence into a legal proceeding, and cancelling Appellant's health insurance (§ 132(a)**remand LBO 264930** back to State of California, Workers' Compensation Appeals Board for complete review. Also, to **Reinstate two violations of California Labor Code § 132(a) that were dismissed by the Appellant "without prejudice**," and;
Order the WC Appeals Board to send the two § 132(a)(4), and Cal-Penal Code § 134 to the Los Angeles County District Attorney for investigation and prosecution thereof.

As a result of perjury in a State investigation DFEH Charge No. E-199899-S-1080-00pe remand back to the State of California, Department of Fair Employment and Housing for review of perjury charges and disposition of same.

Finally, if for no other reason, or cause, this Court should remand based on the discovered 9th Circuit's disposition of pro se litigants. Also, in hopes this Court thoroughly read and analyze Dr. Heckman's report as being constructive criticism and realize that Pro se litigants seriously need some sort of help, and that the 9th Circuit's unpublished "**Handbook**" policies are not the answer, but, part of the problem and in fact discriminatory. The Appellant is a natural born American citizen, not a criminal, nor should he be subjected to differential treatment from a federal court in the United States. The Appellant believes this court should address the 9 th Circuit's egregious pro se unpublished, un Constitutional "**Handbook**" policies. Because, just as all American citizens are protected by the U.S. Constitution, likewise, because of self-representation, a U.S. citizen should never lose his/her Constitutional rights in a federal courtroom, or in appellate review, which has occurred so far in this case. **Order the 9th Circuit Court of Appeals and associated District Courts to discard their hidden pro se litigant procedures and treat all litigants equal and according to the U.S. Constitution**? **No more, or no less should be asked for, or be expected**.

Respectfully submitted by,

Miro J. Satalich Date: November 7, 2005

Miro J. Satalich, in pro se
P.O. Box 93314
Phoenix, AZ 85070
480 283-0355

APPENDIX

APPENDIX A

FILED
SEP 23 2005
CATHY A. CATTERSON
CLERK US COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA; et al.,

No. 04-57163

Plaintiffs,

D.C. No. CV -00-08882-GAF

and

MEMORANDUM *

MIRO J. SATALICH, ex rel.,

Plaintiff - Appellant,

v.

CITY OF LOS ANGELES,

Defendant - Appellee.

Appeal from the United States District Court
for the Central District of California
Gary A. Feess, District Judge, Presiding.

Submitted September 12, 2005**

Before: REINHARDT, RYMER, and HAWKINS,
Circuit Judges.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Miro J. Satalich appeals pro se the district court's summary judgment in favor of the City of Los Angeles ("the City") in his action alleging retaliation and other violations of the False Claims Act. We have jurisdiction pursuant to 28 D.S.C. § 1291. After de novo review, United States ex ref. Aflatooni v. Kitsap Physicians Serv., 314 F.3d 995, 1000 (9th Cir. 2002), we affirm. The district court properly granted summary judgment on Satalich's qui tam claims because Satalich failed to raise a material issue of fact as to whether the City presented any false claims to the federal government. See id. at 1000-1002 (holding it insufficient for relator "to describe a private scheme in detail but then to allege simply and without any stated reason for his belief that claims requesting illegal payments must have been submitted"). The district court also properly granted summary judgment on Satalich's retaliation claims because it properly applied the one-year statute of limitations for personal injury actions that was in effect in California at the time Satalich filed his action. See Graham County Soil & Water Conservation Dist. v. United States ex ref. Wilson, 125 S.Ct. 2444, 2450-52 (2005). We are not persuaded by any of Satalich's arguments for tolling the statute of limitations. Satalich's remaining contentions also lack merit.

2

We deny Satalich's motions to file "electronic evidence," a "physical exhibit," and an "addendum." The Clerk shall file the reply brief submitted to this Court on May 26, 2005 without its physical exhibit. **AFFIRMED.**

APPENDIX B

Case 2:00-cv-08882-GAF-PLA Page 1 of 1
Document 193
Filed 10/25/2005

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA; et al.,
MIRO J. SATALICH, ex rel., No. 04-57163
Plaintiff/Appellant, D.C. No. CV-00-08882-GAF
v. **JUDGMENT**
CITY OF LOS ANGELES.
Defendant - Appellee.

Received
Clerk, U.S. District Court
OCT 28 2005
Central District of California
By Initial/ Deputy

Appeal trom the United States District Court for the Central District of . California, Los Angeles. This cause came on to be heard on the Transcript of the Record from the United States District Court for the Central District of California, Los Angeles and was duly submitted. On consideration whereof, it is now ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is **AFFIRMED.**

Filed and entered 09/23/05

A TRUE COPY
CATHY CATTHERSON
Clerk of the Court
ATTEST
9th Circuit Court Seal
OCT 25 2005
by Ruben Talavera
Deputy Clerk

DOCKETED ON CM
NOV - 2 2005
BY Initial/ 029

193

APPENDIX C

Picture of - Chief Judge Mary Murphy Schroeder
Ninth Circuit - Mary Schroeder - November 1, 2004

Dear Concerned Citizens:
I am pleased to announce publication of the Interim Report of the Ninth Circuit Task Force on Self-Represented Litigants. The mission of the task force, which represents a cross-section of judges, lawyers, and court staff from throughout the circuit, is to make recommendations to the Judicial Council of the Ninth Circuit with respect to improving the administration of the growing number of cases that are filed or defended by unrepresented litigants. Please use the links below to access an Executive Summary, the complete Interim Report and the Report Appendices.

Executive Summary (Link)
Interim Report (Link)
Appendices (Link)

We hope that you will carefully consider the task force's preliminary recommendations and give us the benefit of your constructive criticism. Your comments will provide critical assistance to the task force as it moves forward to produce a final report. Comments should be sent by email to prose@ce9.uscourts.gov. You also may click here to send an email comment. On behalf of the task force, which has been ably chaired by District Judge James Singleton of Alaska, I thank you for your interest in the administration of justice for all litigants who appear in the federal courts of the Ninth Circuit.
Sincerely,

_____

S/Mary M. Schroeder, Chief Judge

APPENDIX D

United States Courts for the Ninth Circuit

COURT SEAL

United States Courts for the Ninth Circuit
Public Information Office
David Madden, Manager. (415) 556-6177
(415) 556-6179 fax.
dmadden@tce9.uscourts.gov

NEWS RELEASE

Nov. 1, 2004 Contact: David Madden (415) 556-6177

Ninth Circuit Task Force Issues
Interim Report on Pro Se Litigants

SAN FRANCISCO - Public comment is being sought on a series of recommendations meant to address the burgeoning impact on federal courts of citizens who" seek to represent themselves in civil litigation. The recommendations are contained in the Interim Report of the Ninth Circuit Task Force on Self-Represented Litigants, which was released today in electronic format and is available for download from the Ninth Circuit's Internet web site: www.ce9.uscourts.gov.
Comments will be accepted via email at prose@ce9.uscourts.gov.
The deadline for public comment is Jan. 3, 2005.
"We hope people will carefully consider the task force's preliminary recommendations and give us the benefit of their constructive criticism," said Ninth Circuit Chief Judge Mary M. Schroeder, who has helped spearhead the effort. Pro se cases, in which at least one party is self-represented, now constitute roughly one-third of all civil filings in the Ninth Circuit. These cases typically require more assistance from court staff as self-represented litigants are less familiar with the law and legal procedure. While intent on keeping the courts accessible to all

litigants, the potential impact on staff resources is of particular concern as the federal judiciary struggles to cope with funding shortfalls. The Task Force on Self-Represented Litigants was established two years ago to advise the Judicial Council of the Ninth Circuit, governing body for federal courts in nine western states and two Pacific Island jurisdictions. The task force includes a cross section of judges, lawyers, academics and court staff from throughout the circuit. District Judge James K. Singleton of Alaska serves as chair. Task force members were organized into subcommittees that focused on different areas of concern and issued recommendations in each. These included case management practices; use of attorneys providing their services pro bono; coordinating with prisons as inmates frequently file lawsuits; organizing educational programs and providing self-help materials; and collecting data. Ninth Circuit Task Force Issues Interim Report on Pro Se Litigants Public comment generated by the interim report will be considered for inclusion in the final version.

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Office of the Circuit Executive
95 Seventh St. P.O. Box 193939
San Francisco CA 94119-3939

APPENDIX E

"Ninth Circuit Pro Se Handbook
I. INTRODUCTION
This handbook is designed to address issues raised in the processing of pro se civil and habeas corpus actions in the United States District Courts of the Ninth Circuit and in the Court of Appeals for the Ninth Circuit. The purpose of this guide is to explore appellate jurisdictional issues vis-a-vis the district courts and to examine the processing of pro se matters in the district courts from an appellate perspective. The guide includes a discussion of the standards generally applicable in processing and disposing of pro se civil actions in the district court, and describes the role of the Ninth Circuit Pro Se Unit and Staff Attorneys' Office in the processing of pro se appeals. This guide is not intended to serve as a substitute for the direct, hands-on experience and knowledge of the district courts in individual cases, but is simply a clearinghouse of relevant case law and appellate concerns designed to assist the district courts in processing their ever- increasing pro se caseloads.

(The following is in part)

Office of the Circuit Executive"
"Ninth Circuit Pro Se Handbook III.
PROCESSING PRO SE MATTERS IN NINTH CIRCUIT
A. Initial Review of Appeal through Issuance of Mandate
(1) Initial Review of Pro Se Appeals
(a) Jurisdictional Review
The Pro Se Unit of the Ninth Circuit Court of Appeals, consisting of one supervising attorney, three clerk paralegals, and one case coordinator, is responsible for the initial review and early management or disposition of pro se appeals. All new civil and habeas pro se appeals and petitions for review are reviewed for appellate jurisdiction by the paralegals (under the

direct supervision of the supervising attorney) immediately after the appeal is docketed in the Ninth Circuit."

"**See Ninth Cir. R. 3-4(b), 33-1** Circuit Advisory Committee Note. "

"(3) Post-Briefing Dispositions

(a) Summary Disposition Upon the initial review of all civil pro se appeals, the Pro Se Unit attorney identifies appeals that may be appropriate for summary disposition and monitors those appeals for the filing of the opening brief and for presentation to a motions panel. Alternatively, the attorney will issue an order directing the appellant to show cause why the judgment should not be summarily affirmed."

"See Ninth Cir. R. 3-6. Summary disposition is appropriate where the result is clear based solely on a review of the opening brief and the record. See United States v. Hooten, 693 F.2d 857, 858 (9th Cir. 1982). Typical cases summarily disposed of by motions panels are dismissals based on 28 U.S.C. § 1915, denials of Fed. R. Civ. P. 60(b) motions to vacate and jurisdictional remand orders in actions removed pursuant to 28 U.S.C. § 1443. In addition, appeals from the denial of leave to file the action in forma pauperis are almost always appropriate for summary disposition. Because the denial of leave to file an action in forma pauperis is such an early disposition, the record consists solely of the complaint and the order of denial. Review of that order is not a complex matter, and there is never more than one party (the appellant) to the appeal, so the order can generally be summarily affirmed or reversed without delay. Such an order may be reversed prior to briefing because there is no appellee, but the court may not affirm prior to the filing of appellant's brief unless the appellant has been afforded an opportunity to show cause in writing why the judgment should not be summarily affirmed. See United States v. Harris, 846 F.2d 50, 51 (9th Cir. 1988); Ninth Cir. R. 3-6."

"(b) Preliminary Injunction Appeals Pursuant to Ninth Cir. R. 3-3, appeals from the award or denial of preliminary injunctive relief are processed in an expedited manner and are generally presented to motions panels for disposition on the merits upon completion of the briefing. Pro se preliminary injunction appeals are processed from the filing of the notice of appeal through final disposition by the Pro Se Unit. All motions, both procedural and substantive, are processed by the pro se attorney, as well as the ultimate disposition of the appeal. If the appeal is deemed too complex or novel for disposition by a motions panel, the staff attorney or the panel may remove the appeal to a regular argument calendar."

" (c) Inventory Upon completion of the briefing in all appeals surviving dismissal or summary or expedited disposition, case management attorneys review the briefs and the record to identify and track the issues on appeal and to assign a weight from 2 to 10, depending on complexity, record size, number and type of issues and general level of difficulty. Pro se appeals are presumptively assigned an "S" weight and referred to the central Staff Attorneys' office for presentation to and disposition by monthly oral screening panels. The more complex or novel pro se appeals are generally referred to the pro se attorney, who serves as Pro Bono Coordinator, to determine whether counsel should be appointed (see section (e) below)."

"(d) Oral Screening Process The vast majority of pro se appeals surviving dismissal and summary disposition are designated as oral screening cases and referred to the Staff Attorneys' office for processing. The staff attorney reviews the briefs and record, prepares a proposed memorandum disposition (usually not for publication) and makes an oral presentation to the motions/screening panel, which convenes once or twice a month in San Francisco and is comprised of three judges randomly selected on a monthly basis."

APPENDIX F

"Comments on the Ninth Circuit pro se Task Force Report
By: Charles W. Heckman, Dr. Sci.
A Matter of Justice Coalition (AMOJ)
Committee for the Ninth Circuit"

"I. Basic summary of the Task Force's report

The report of the Task Force summarizes the many problems faced by the United States courts when persons not educated or trained as attorneys attempt to present their own legal arguments in various kinds of proceedings. It then introduces a variety of proposals to reduce the problems identified by the Task Force members, ranging from simplifying procedures to enlisting the assistance of pro bono attorneys or law students to minimize procedural errors, present arguments in an objective way without introducing the emotional responses typically elicited when a person discusses personal conflicts, and give litigants a better understanding of legal and practical limitations to the actions of a court. It takes note of the fact that prior discussions of legal aspects of a lawsuit with an attorney often disabuse a litigant of misunderstandings of the law before the court is required to instruct the litigant about erroneous principles on which a lawsuit is based. The recommendations of the task force are practical and include suggested improvements that would alleviate many of the problems addressed. Most of these suggestions can be accepted, and it is hoped that resources can be found to effect the improvements. What must be faulted in this report is not the solutions proposed for the problems presented but rather the failure to address the most frequent complaints of pro se litigants, which are similar to complaints frequently voiced by litigants represented by attorneys with average or less than average capabilities.

II. Fundamental role of the judiciary

In 1947, Justice William O Douglas wrote that the basic

function of any court is to judge the case on the merits. That means that two factors and only two should influence the decision: the law and the facts. If all is functioning as it should, then any case in which the facts indicate that one party must prevail under the law should have only one outcome. This is true regardless of whether or not the party whose case is supported by the law and the facts is represented by counsel. Justice should not depend upon whether or not a person can afford a lawyer. While it is true that a litigant acting pro se might be less likely to present a clear case than an experienced lawyer and might not be able to cite all of the laws that might support his case, if the facts support any claim he makes under any law, he should prevail. If a litigant arguing his own case lets his emotions show, thereby provoking a negative reaction, or if the litigant lacks skill in expressing himself, it is understandable that he may suffer disadvantage where the facts are not altogether clear. However, it is the function of a court, especially the jury, to sort through the evidence presented and provide a decision in accord with the law and facts, even if some extra effort has to be exerted. Any court that permits factors other than the law and the facts to influence the outcome of any proceeding has failed in its fundamental duty.

III. Problems not addressed in the report

A. The Role of Bias

One of the many serious complaints often voiced by litigants but not seriously addressed in the report of the Task Force is bias by the judge. However, the report clearly expresses a common attitude toward pro se litigants, starting of p. 6 of the report: "Some judges and lawyers are convinced, for example, that pro se litigants as a class generally bring meritless claims, and that any program designed to educate or assist them would only increase the number of meritless claims in the court system. This point of view is doubtless influenced by those pro se cases that are brought by individuals suffering from a mental disability or for purposes of harassment. Closely related to that

thought is the belief that appointing attorneys for pro se clients is a waste of resources and in the long run simply complicates efforts to keep the system clear of meritless cases." The Task Force fails to identify who holds this opinion, but both lawyers and judges have frequently expressed it or opinions very much like it. The main focus of this task force should not be with methods by which unbiased judges can make the submissions of pro se litigants easier for the court to deal with but rather with developing methods to assist a pro se litigant who has been the victim of a judge with the preconception that whatever he submits to the court is without merit, and his lawsuit must be dismissed before any unnecessary time of the court is wasted. If all judges were perfect human beings, we could assume that the private opinion of a lawyer or a judge would not be reflected the judge's rulings. However, we know that few people approach perfection, and prejudice by decision-makers against members of certain groups has been the cause of continuous, bitter conflict since the civil rights movement first brought the effects of biases of many kinds to public view. Prejudices often have a greater impact on the outcome of administrative hearings and lawsuits than parties with an obligation to be impartial like to admit. Whether the prejudice is deliberate and malicious or entirely unintended, decisions colored by personal biases can be just as devastating to the victims of the resulting injustice. An even more enlightening articulation of the prejudice litigants often face appeared in numerous discussions on the decision of a Washington State appeals court in Hill v. BCTI Income Fund, 97 Wn. App. 657 (1999), later upheld by the Washington State Supreme Court. Although it is the decision of a state court, it draws on the en banc opinion of the U. S. Court of Appeals for the Second Circuit in Fisher v. Vassar College, 70 F.3d 1420, 1437 (2d Cir.). The opinion in Hill v. BCTI defends a school of thought within the legal profession, which has been having a revolutionary effect on American jurisprudence. It parallels the

controversial theory of a "living constitution," which condones the "updating" of the United States Constitution by the courts to conform to the personal opinion of judges concerning what the public wants and will accept. On a more mundane level, this revolution in judicial theory is interpreted by many judges as a mandate to quickly dismiss any lawsuit that can be dismissed without causing a public outcry, regardless of the merits of the case. One of the main innovations introduced by the decision in Fisher v. Vassar is the acceptability and utility of lying to the court. This was discussed at length in a dissenting opinion by the Chief Judge of the Court of Appeals of the Second Circuit, who pointed out the implications of the decision reached by his colleagues. Briefly stated, a jury of the trial court had determined that the spokesmen for Vassar had lied about the reason Fisher was denied tenure. It therefore concluded that the prima facie case Fisher had established had not been rebutted, and the relief she had demanded was granted. The Second Circuit, en banc, reversed the decision of the trial court by a single vote, ruling that the non-discriminatory reason given for not granting Fisher tenure had eliminated her prima facie case, even though the reason was shown unequivocally to be a lie. With the case in favor of Fisher eliminated, the court opined that she was required to meet a higher level of proof, which was not defined by the court and was apparently not humanly possible to meet, at least without the services of a certified mind-reader. Expanding on this legal opinion, the Washington State courts in Hill v. BCTI set an unattainable burden of proof on a plaintiff who has alleged discrimination as soon as the defendant lies to the court and alleges that the motivation was not to discriminate against the plaintiff. According to the opinion of the Washington courts, proving conclusively that the defendant's allegation was a lie is not enough for a plaintiff to prevail. He must prove that the motive of the plaintiff was to discriminate against him for the reason alleged in the complaint. Hence, if age

discrimination is alleged, the plaintiff must prove that the real reason for the discriminatory action and the subsequent lie by the defendant was actually the age of the plaintiff and not, for example, his religion, race, or gender. The judges of the Washington State Court of Appeals were well aware of the fact that the opposite decision had been reached by the United States Supreme Court, but they reasoned that the Supreme Court was wrong and the State of Washington was free to decide contrary to the highest Federal court because the State of Washington has its own constitution and its courts are therefore not bound by the United States Constitution, as interpreted by the Federal judiciary. What is interesting about this case in the context of pro se litigation is not the decision itself but rather the opinion of an author who defended the decision as vital to preserve the integrity of the judicial system. He stated clearly in his article that if one person came to a court with a discrimination complaint and obtained relief, this would encourage other litigants to file similar lawsuits, and there are already too many lawsuits being filed. There is a strong undercurrent within the legal profession, as well as among corporations that are frequently sued, propagating the opinion that filing civil lawsuits is somehow sinister and un-American. They wish to discourage most lawsuits by denying justice to litigants and thereby discouraging other litigants from seeking justice in a court. While there is a tradition from the Old West that a man settles his disputes by shooting it out with his adversary or settles lesser disputes with his fists, it was long thought that this was a less desirable alternative to letting a jury decide which party should prevail. Apparently, some members of the legal profession think otherwise and wish to close off the courts to ordinary citizens, returning dispute resolution to the means available in the "Wild West." It would be well to determine how closely the decrease in justice provided in civil suits has paralleled the increase in crimes of violence between people with no civilized means available to settle their dispute.

How many of the civil disputes wrongfully dismissed or inequitably settled come back to the court as a criminal case? The treatment of pro se litigants reflects the desire expressed by many politicians and judges that the number of lawsuits be reduced. Showing litigants who lack strong financial resources, the services of a first-class law firm, backing by an influential organization, or attention in the press that they have no chance of prevailing in a lawsuit or even of presenting their cases to a jury might well discourage other litigants from seeking redress in the courts but it also encourages persons in positions of authority to deliberately break the law, knowing that there is almost no chance that the victim would be able to obtain redress in a court of law. It seems obvious to me that the flood of lawsuits is the result of a massive increase in white collar crime in the United States, most of which is ignored by law enforcement authorities on the excuse that their time is needed to combat crimes of violence. The victims are therefore forced to attempt to obtain redress in a civil lawsuit, and most are unable to obtain legal counsel. A recent estimate made by a group in Iowa suggested that 70% of the population of that state did not have enough money to retain the services of an attorney. Because most white collar criminals have learned the applicable law very well before embarking on their criminal careers and many seem to have the active assistance of local civil servants or even judges, attorneys do not see much chance of immediate success before a court and will therefore refuse to represent an indigent litigant on a contingency basis. Furthermore, many attorneys working out of small offices without a major law firm behind them hardly do better in court than pro se litigants. Therefore, as the white collar criminals, deliberate abusers of civil rights, unscrupulous business firms, and corrupt public officials become bolder, the victims have no way of protecting their property and livelihoods other than by representing themselves in a lawsuit. Even though an increasing number of pro se litigants see the courts as hostile to

them and their needs for redress under the law, the flood of lawsuits grows because of the massive increase in the crimes that the current attitude of the courts has engendered. Missing from the report by the Task Force is any adequate remedy for the actions of judges who adhere to the belief that pro se litigants do not deserve full consideration by the court. This can be justified by the self-fulfilling prophesy that pro se litigants never win. As a result, many judges believe that any time given to a lawsuit in which a litigant represents himself is wasted. Therefore, pro se litigants really do not win simply because the prophesy that they will lose is self-fulfilling. Matter of Justice All Rights Reserved

B. Remedies that fail

If a district judge summarily dismisses the civil lawsuit of a pro se plaintiff without reviewing any of the facts and writes a short opinion that fails to address the fundamental complaint, indicating that the judge barely knew what issues the complaint addressed, the plaintiff can appeal the dismissal to the court of appeals. In a great many cases, the plaintiff receives a brief affirmation of the district judge's opinion, which also fails to address the issues in the complaint and almost always contains the notation that the opinion cannot be cited as a precedent and should not be published. The plaintiff can then file an appeal with the United States Supreme Court with near certainty that certiorari will not be denied. Many litigants lack the money to have their petitions for certiorari correctly printed and bound to the satisfaction of the clerk, and others fail to present the legal issues in an understandable manner. Even if all submissions are perfect, however, the petition will almost certainly be denied in favor of appeals that are given considerable publicity in the press, are promoted by major organizations, or are otherwise likely to bring fame and praise to the justices. The problems of ordinary citizens, no matter how devastating to them and their families, are ignored, and they find that they would have little more chance of success in getting a justified complaint before

a jury than they would have of winning a lottery. For example, after the courts in several circuits had summarily dismissed hundreds and perhaps thousands of lawsuits alleging employment discrimination at the complaint stage because the plaintiff had failed to provide enough hard evidence to establish a prima facie case when the complaint was submitted, the United States Supreme Court agreed to hear one of the appeals from the Second Circuit. In Swierkiewicz v. Sorema N.A., 534 U.S. (2002), it decided unanimously that it is a gross violation of procedures to dismiss a lawsuit at this stage of the proceedings. Among the points the justices made were that a plaintiff can prevail without establishing a prima facie case at all, that a judge's opinion of whether or not a litigant will prevail before a jury is irrelevant to decision to dismiss a lawsuit, and that it is fundamentally unfair to dismiss a lawsuit before the whole body of facts can be revealed through discovery. While this decision provided the plaintiff with a chance to have his lawsuit heard by a jury on the merits, it affirmed that thousands of litigants whose lawsuits had been improperly dismissed over the many years during which the appeals courts had been violating procedures had been left without any access to justice. Still more perverse was the continued dismissal of lawsuits at the complaint stage, even after the Supreme Court had denounced this practice. It was well known to the judges guilty of this practice that any subsequent petitions for certiorari citing this issue would be denied on the grounds that the Supreme Court had already decided the issue and would not agree to decide it again. This would leave a litigant no way of redressing violations of his civil rights just because he had the bad luck of coming before a judge who is trying to discourage lawsuits by issuing non-precedential dismissals at the complaint stage and appeals court judges who affirm decisions of the lower court with a rubber stamp. Citing the clear opinion of the U.S. Supreme Court in Swiercewicz v. Sorema N.A. would have no effect on

the outcome before a judge who assumes that anything filed pro se is without merit.

In case of particularly severe violations of the law, procedures, or ethics by a judge, a litigant is limited to filing a complaint with a judicial board established for hearing such complaints. Other avenues of redress are closed off because judicial immunity from civil liability was made absolute during the 1990s, even if corruption or malice motivated the judge's actions. Experience shows that the boards investigating misconduct by judges move extremely slowly, and a litigant has roughly one chance in a thousand of having a rogue judge censured, even mildly. It can be concluded that a litigant whose lawsuit has been dismissed because of the bias of a judge against him, a class to which he belongs, pro se litigants in general, or the kind of lawsuit he has filed has almost no chance of redress, either on appeal or in complaint proceedings against a judge. Human nature clearly dictates that when members of any group are permitted to perform illegal, immoral, and unjust actions against other persons with complete impunity, many of them will do so, some because of laziness, others because of malice, and still others in anticipation of gratuities from a favored party. A pro se litigant has no recourse against a judge who does not want his complaint heard due to bias of any kind, and the fact that a judge has the power to deny him access to a jury effectively eliminates an important civil right supposedly guaranteed by Amendment VII of the United States Constitution. C. Common experiences of pro se litigants The solutions proposed by the Task Force presume good will by the judges and conformity with the standards of ethics and behavior traditionally held by our society. Unfortunately, in speaking and corresponding with many pro se litigants, I have learned that there are common problems that reflect an erosion of human values and are often accompanied by abusive behavior by judges. These problems are less likely to arise when a litigant is represented by a

lawyer, whose status as an "insider" in the legal profession might tend to restrain the opposing attorney and presiding judge from improper conduct. Such conduct is difficult for pro se litigants to cope with, but it is readily recognized when it occur. Eventually, pro se litigants make their opinions of the court public, and the increasing criticism leads to a general loss of faith in courts. The growing dissatisfaction of the public with the judicial system is rooted in the negative opinions developed by many litigants who know they have been improperly or illegally treated. Losing a lawsuit is fundamentally different from being denied due process and a fair hearing, and even pro se litigants without formal education in a law school can immediately tell the difference. The most common complaints by litigants of misconduct by the courts include the following:

1. Perjury is tolerated by the judge

This complaint has been made by the great majority of pro se litigants with whom I have spoken. Very often, the false testimony is given by one or more government employees. Even when parts of the testimony are shown to be false, judges continue to give full credence to the witness in the remaining parts of the testimony. The judge then dismisses the lawsuit of a pro se litigant citing the perjured testimony as evidence that the lawsuit has no merit. Usually there are documents in the file clearly showing that the testimony was false, but these are simply disregarded by the judge.

Prosecutions for perjury have become rare to non-existent. Government employees have been given complete immunity for perjury they commit "in the line of duty," even if it is given with malice. Government prosecutors may suborn witnesses to perjury by promising them immunity for crimes they have been accused of. It has even been alleged that government employees can be fired for refusing to give false testimony at the behest of their supervisors. Many cases are known where civil servants have advanced their own careers by deliberately misleading courts, administrative boards, and even Congress to

advance a political agenda espoused by the their supervisors.

2. Records submitted to the court disappear from the files

This complaint has frequently been made. Some litigants note that the entries of the documents are still in the court records but the documents themselves have disappeared. Even if copies of the records are retained by the litigant, they usually cannot be added to a record on appeal unless they are still in the file of the lower court.

3. Judges' opinions fail to address the issues of the lawsuit

Many litigants complain that orders for dismissal address issues that were never raised in the lawsuit and fail to address the issues that were. In light of the fact that most judges have earned a law degree, some decisions have convinced the litigants that the legal issues were deliberately misconstrued by the judge. For example, if a plaintiff seeks injunctive relief pursuant to the Administrative Procedures Act and monetary relief citing the Federal Tort Claim Act, a judge may deny the injunctive relief on the grounds that there are no provisions for such relief in the Federal Tort Claim Act and that the Administrative Procedures Act does not authorize monetary relief. Similarly, a lawsuit alleging failure of the Department of Labor to investigate a discrimination complaint against a private university was dismissed on the grounds that the plaintiff was seeking Federal employment through the courts. Even a law professor from Hofstra University complained in a speech that he was tired of reading decisions that did not address the issues of the case. At best, this means that the law professor was able to understand the issues of the lawsuit from the submissions, while the judge allegedly was not. At worst, this indicates that the judge was deliberately falsifying the issues in order to justify an obviously faulty decision. According to the law professor, after he finished his speech, a judge leaned over to him and said, "You don't know the half of it."

4. Certain litigants must always win

One of the most harmful practices of the courts becomes most evident when statistical surveys of the outcomes of litigation are conducted. Some judges have apparently developed strong biases for or against certain kinds of lawsuit or litigant and lose sight of the fact that each case deserves a separate analysis. The outcomes of these lawsuits most frequently favor government agencies as defendants and major special interest groups, such as the American Civil Liberties Union, as representatives of a plaintiff. Decisions are reached without jury trial to assure that the favored litigant wins. The trend to summarily dismiss lawsuits without trials is reflected in surveys showing that more than 11% of all civil lawsuits were decided by juries in the early 1960s, while less than 2% reach a jury now. It is not only the courts that are guilty of denying due process to protect favored litigants. Congress has also established special means of adjudication to remove the proceedings against certain agencies from the normal judicial channels. Some of the agencies established for administrative adjudication have earned a reputation for extreme bias in favor of the government agencies they are supposed to treat impartially. For example, the Merit System Protection Board (MSPB), which adjudicates complaints filed by veterans because their preference rights in the civil service have been violated, has never decided in favor of a veteran in any appeal. The United States Court of Appeals for the Federal Circuit, which is the only court with jurisdiction over appeals from the MSPB, has never decided in favor of a whistleblower, after hearing 71 appeals citing the Whistleblowers' Protection Act. It is also doubtful whether it has ever decided in favor of a veteran, although I have yet to find records on this point. It is noteworthy that under the law, the burden of proof is on the agency, and in the case of appeals filed by whistleblowers, clear and convincing evidence is required, giving whistleblowers a clear benefit of the doubt. Nevertheless, the agency always

wins in such appeals, as well as those brought under veterans' laws. The Veterans' Employment and Training Service (VETS) accepts employment discrimination complaints from veterans. All complaints it receives are not maintained in the agency files, but of 1029 complaints it did place in its records in 2001, five were brought to the courts, but only one was adjudicated as a civil lawsuit. Any lawsuits brought by a plaintiff pro per fall into the category of "thousand to one shots," but so do discrimination lawsuits brought against government agencies with the assistance of "B" or "C-class" lawyers. Similarly, civil rights and employment discrimination lawsuits routinely fail, unless a major special interest group supports one of the parties. Any time lawsuits that depend on an individual interpretation of the facts are decided so preponderantly in favor of one party without the assistance of a jury, suspicion of bias is justified. In conflicts between human beings, rank, job title, or affiliation do not determine which party has followed the law and which party has broken it. If the supervisor prevails one thousand times in whistleblower appeals for every time the whistleblower prevails, it is clear that the adjudication has not been impartial. This conclusion is given great support by the findings of Congress that reprisal against whistleblowers is a problem of massive proportions in the civil service, requiring several amendments to make the Whistleblowers' Protection Act considerably stronger. That the efforts of Congress have been consistently undermined by the judges on the United States Court of Appeals for the Federal Circuit reflects an imbalance that has been developing between the powers of the legislative and judicial branches in recent years.

5. Different standards are applied to different litigants

Powerful plaintiffs seek to delay litigation until the opponent dies or is forced to end the litigation for financial reasons. Some well-represented litigants do not respond to the summons until a motion for default has been entered, and judges routinely excuse the failure and refuse to enter a default judgment. The

same judges are quick to dismiss lawsuits because a pro se plaintiff has missed a deadline by one or two days, even when the cause of the delay was beyond the control of the litigant. The lack of impartiality is plainly evident when one party is permitted unlimited delays, in spite of the fact that the United States Department of Justice or a major law firm with a large staff of lawyers is representing that party, while a pro se litigant forced to act alone is held to the strictest standards stipulated in the **FRCP** and **local rules**. Allowing one litigant unlimited delays while the other is facing severe financial difficulties as long as the lawsuit remains unsettled is a tactic that clearly violates judicial fairness and at least the spirit of the United States Constitution, which demands a speedy trial in criminal matters and, by implication, reasonable speed in settling civil disputes, as well.

6. Recent handling of civil lawsuits by the courts have instigated a white collar crime wave

Many successful white collar criminals have obtained the cooperation of local courts to defraud private citizens out of large sums of money, often leaving the victim destitute. A few of the methods frequently used include abuse of bankruptcy procedures to loot estates, illegal foreclosures on real estate, seizure of cash or property without due process, and fraud during divorce proceedings. Federal courts should have jurisdiction over obvious frauds perpetrated by state courts under the RICO statute and civil rights laws. However, failure of effective action by Federal judges to stop obvious fraud perpetrated by colleagues employed by state and local government encourages larcenous state officials, including judges, to conclude that their positions allow them to illegally enrich themselves at the expense of selected victims with complete impunity. Litigants who have sought protection from state and local criminal gangs in Federal courts have encountered many years of delays, denial of jury trials, and refusals to issue decisions justified by the facts of the case.

Many abuses have come to public attention in recent years, but the crime wave has grown so rapidly, many of the practices have not received sufficient publicity to warn potential victims. Crimes like identity theft, fraudulent foreclosure, fraud in stating fees and interest charges, and abuses of eminent domain have become epidemic throughout the United States. They can financially ruin victims, who have not found effective protection through either criminal or civil procedures.

7. Court orders go unheeded

Failure of courts to enforce their own orders granting relief to litigants may eventually result in more difficulties than adjudicating the initial petition for relief. Plaintiffs may prevail but gain no redress from the decision because judges refuse to issue effective orders mandating the remedies demanded by a jury. This is a problem that often arises when the delinquent party is a government agency. Common examples of deliberate resistance to court orders include ignoring orders to produce documents requested under the Freedom of Information or Privacy Act and failure of public officials to obey orders to return money or property unlawfully taken from citizens by law enforcement agencies.

8. Judges give orders contrary to law and accepted standards of behavior Opposite the failure to enforce just orders for relief is issuing orders demanding illegal or obviously impractical relief from litigants. Examples of practices that have become common during the past few years include demands for support payments from one party to divorce proceedings that exceed the total earnings of the person ordered to pay, jailing of indigent litigants who cannot pay what the court has demanded of them for other reasons, removal of children from their natural parents without due process, and imposition of medical treatment on minor children without informing their parents.

9. Judges refuse to take actions required by law

Many routine actions required of judges have created barriers to the enforcement of laws as intended by Congress. An

excellent example of this is the action usually taken after a litigant complaints that he cannot obtain documents requested pursuant to the Freedom of Information Act. This law was passed by Congress because of the great resistance shown by Federal civil servants to making their unclassified documents available to the general public. Records created through the use of tax money should belong to the public and be made available on request. Congress obviously intended that documents formally requested be made available immediately. It therefore specified a waiting period of no more than ten working days and permitted a person who requested the records to file a lawsuit to obtain the documents if the agency is not forthcoming. It requires agencies to assist people making requests to identify the documents and to provide the documents after charging only minimal copying fees. Obviously, to uphold this law as Congress intended, a judge must order immediate release of the records to the court for distribution to the plaintiff after the court has ruled on any objections the agency has made to their release. Because obtaining records as quickly as possible is often necessary for a litigant to obtain some benefit to which he is entitled, complete an article for publication in a newspaper or periodical, or protect himself of a relative from the consequences of false information about him being distributed with official records, the rapid availability of records is vital. Instead of upholding the high standards demanded by the Freedom of Information Act, judges have consistently permitted lawsuits to obtain public information to drag on for several years, often making the intended use of the documents impossible. Judges seem to attempt to avoid issuing orders to government agencies, even when the law mandates this. They fail to review contested records in camera, as provided for in the law, and simply hope the plaintiff will eventually withdraw his demand for the documents. Although obtaining documents often costs plaintiffs excessive amounts of money for the litigation, judges

seldom offer the monetary relief specified in the law. They also fail to impose the requirement of the law that photocopy fees be reasonable. While private shops provide photocopies for 5 cents or less, agencies may charge exorbitant amounts to copy their documents. For example, about two years ago, one agency demanded 31 cents for each copy, or more than 6 times the price on the private market. The failure of the courts to impose sanctions on civil servants who make it a sport to defy the Freedom of Information Act has led to the development of procedures to keep public documents out of the hands of citizens who want to obtain them.

10. Courts have become inconsistent and arbitrary

Courts have recently begun to establish very confusing precedents, reverse their own decisions, and ignore real issues rather than settling them. In recent years, different Courts of Appeals have issued opposite interpretations of the same law, making one action legal under the jurisdiction of one circuit and illegal under the jurisdiction of another. Because the United States Supreme Court denied certiorari each time a litigant attempted to obtain a definitive decision on some of these matters, Federal law can mean one thing in one circuit and the opposite in another. For example, whether or not Federal law permits factory workers to speak with each other in a language other than English depends upon the area of the country in which the factory is located. Changing public opinion or even an unusual personal opinion held by the judge to whom the case has been assigned may result in a lawsuit being decided in a manner contrary to other recent decisions in nearly identical cases. When judicial opinions on the interpretation of a law are continually fluctuating because one judge approves of the law while another does not, whichever litigant loses will feel cheated by the court because other litigants in exactly in the same position won their lawsuits. This situation causes more litigants to risk a lawsuit rather than settling the dispute out of court because winning or losing

depends only on the whim of the judge hearing the case rather than on a consistent and unambiguous interpretation of the law. An advantage of being represented by counsel is often the knowledge he brings concerning which judges will be sympathetic to the litigant's case and which will favor the other party. In an impartial system, such considerations would not be a factor. The founding fathers hoped to eliminate this problem by insisting that decisions be rendered by juries, but by increasingly usurping the duties of the jurors, judges have permitted their own beliefs on the wisdom of individual laws to override the stated intentions of Congress. Because all judges do not hold the same opinions, an increasing inconsistency in decisions is becoming an increasing problem for pro se litigants and lawyers, alike.

11. Federalism theory interferes with practical justice In recent history, Federal courts have intervened in many disputes between citizens and individual states, where the state court system was clearly violating or assisting in the violation of civil rights. Since the first Civil Rights statutes were passed in 1871, Congress has shown a clear intent to place the guarantees in Amendments XIII, XIV, and XV above the limitations on suits against states in Amendment XI. Federal courts belatedly struck down state laws deliberately passed to bar Americans of African descent from voting, attending schools with white children, and using public facilities. These rulings have clearly focused the attention of the nation on the fact that states are prone to commit actions against their citizens that violate Federal guarantees defined as civil and human rights by our Constitution. Recently, the theory of federalism has been revived, and Federal courts have become less willing to interfere with the actions of state courts, no matter how unjust and reprehensible. One of the most important reasons for Federal courts to exist is to provide citizens with a final recourse against clearly illegal actions committed by state and local government, which are much more likely to fall under the

influence of criminal conspirators than the much more diverse Federal system. If the Federal courts disqualify themselves from settling disputes between citizens and state governments, they have clearly left the citizens vulnerable to losing their civil rights through clearly illegal actions by small, corrupt political machines.

To Top IV.

Remedies

What is the court supposed to do?

The basic reason for establishing a judicial system is to settle disputes that are addressed by existing laws. It has been repeatedly stated by experts on matters judicial in the United States that the ultimate goal is to decide all matters on the merits. That means to most reasonable persons that the court should concern itself with two factors and only two factors: the law and the material facts. The blindfold on the statue of Justice is there to keep attention on the scales and not on the race, color, national origin, age, gender, appearance, financial condition, social position, or friends of the litigants. It stands to reason that a pro se litigant has as much chance of being entitled to relief according to the law and the facts as the litigant with enough money to afford the services of the best law firm in the country. The reason everyone who can afford it will seek the services of a class A law firm is that the presentation of the law and facts of the case in the arguments is reputed to sway judges and juries toward the side of one client where the issues are not entirely clear. However, if skill in arguing becomes the sole criterion for determining who prevails in a lawsuit, then the courts have failed in their duty to provide a fully impartial forum for presenting the facts. The Task Force must address one primary problem: a failure of the court to be impartial. This failure is usually apparent from the outcome of lawsuits. If pro se litigants always or almost always lose, then the courts have failed. No class of litigants is right or wrong 100% of the time. If one person comes to the

court for revenge after being fired for poor performance, the court cannot conclude that the next person raising the same claim was not fired for failing to become an accomplice to illegal actions his boss is engaged in, for belonging to a race that the boss does not like, or for being too old when the boss wants only youthful employees. If a father must be kept away from children he is abusing, that does not mean that the next father who seeks custody of his children is abusing them as well. If personal property was seized from one person because of his refusal to pay taxes, it cannot be concluded that there is no merit in the lawsuit of the next person who complains that his property was illegally confiscated by corrupt public officials. As already discussed, pro se lawsuits are increasing for several reasons, which have nothing to do with the law or the facts in each individual case. These include:

1) a white collar crime wave encouraged by the failure of prosecutors and judges to focus on anything but violent crime;

2) a breakdown in government accountability resulting in civil servants wasting funds on a massive scale and abusing the rights of citizens;

3) an increasing resistance by large corporations to being held accountable for the harm they do to ordinary citizens;

4) the continual erosion of traditional values, which formerly placed limits on the excesses society would tolerate; and

5) the combination of lower earnings by the average American and the increasing fees demanded by competent lawyers. A strict enforcement of the law and increasing penalties for wrongdoing would do much to eliminate all of these reasons. Misconduct will increase as long as most perpetrators escape all consequences for their actions and penalties remain inconsequential. Supply and demand regulate what lawyers charge and will result in lower fees when the causes for the increasing number of lawsuits are eliminated. If the courts were functioning fairly and efficiently, the outcome of a lawsuit would be relatively easy to predict according the circumstances

and not dependent on non-merit factors. That means that a pro se litigant showing that his rights under any law had been violated and that he had suffered some kind of harm because of the violation would face no reduction in his chances of success because he was not represented by a lawyer. Only the law, which he would not necessarily have to cite correctly, and the facts of the case would determine the outcome. Any reduction in the chances of his success with a meritorious claim would indicate that the court has not fulfilled its function. The Task Force need only focus on a pro se litigant's chance of success with a meritorious claim to have performed its duties to the complete satisfaction of all. If a pro se litigant fails to prevail in spite of the fact that his claim is meritorious, the system has failed. The Task Force should seek remedies assuring that each meritorious claim results in the relief prescribed by law regardless of whether or not the litigant is represented by counsel. It should seek a review process by which sufficient attention is given to each lawsuit to assure that the prejudice of one judge cannot perpetrate a miscarriage of justice for any reason. This may well require an increase in the personnel assigned to review each appeal and an increased recruitment of jurors. If so, then Congress should be forcefully informed that increased funding will be required. It should not be the concern of the Task Force that baseless claims, lawsuits filed to harass, or esoteric challenges to established institutions are not given an appreciable amount of legal aid. It should also not concern the Task Force that jury decisions are challenged by the litigants who do not prevail. However, if almost every lawsuit filed pro se is dismissed without a trial, it should be clear that due process is not being provided by the courts.

V. The solution in the United States Constitution

The Constitution of the United States includes all necessary ingredients for making the courts function fairly and efficiently. In clear and concise English, it is demanded that every person accused of a crime and every litigant in a lawsuit involving

more than $20 has a right to a trial by jury. It does not provide for judges substituting their opinions for the decision of a jury of peers. It requires speedy trial of persons indicted for crimes and assures that the common law rights enjoyed by the English colonists at the time the United States declared its independence are respected. Later amendments guaranteed every citizen equal treatment under the law.

Determining whether any claim is meritorious after the facts have been presented belongs to a jury. It is a basic right of every litigant to have a jury decide whether or not he prevails based on the evidence presented. A judge may rig the outcome of a jury trial by refusing to let a litigant present material evidence or by giving false instructions to the jury. However, most complaints by pro se litigants result from their being denied any trial by jury at all. Any litigant, with or without counsel, must provide a complaint alleging that a specific law was violated causing him some form of damage or denying him some right. As an example, we can take the typical outcome of what should be an open and shut case to see whether the Constitution is being followed. The Privacy Act requires correction of false records concerning any citizen, and a citizen files a complaint that an agency is maintaining records about him that he alleges are false. The Court is empowered to review the record and the evidence that the person presents and order correction or removal of the record. It also authorizes damages to the person who demanded the change and reasonable legal costs. Congress expressed the demand that agency responses be prompt. In a typical case, the agency would respond to the complaint by claiming various immunities and file a motion for dismissal based on irrelevant claims of privilege and sovereign immunity. The matter would remain on the docket for more than a year without any action being taken, and finally the judge would dismiss the lawsuit. There would be no review of the records by either a judge or a jury, no review of the evidence, no discovery to reveal other

relevant matters, and no consideration of the material facts. The judge would simply have assumed that the case would have no merit because it was filed pro se and any attention given to it would be a waste of time. In such a case, there would be no question that the plaintiff alleged a violation of a law and that the law specifically waived sovereign immunity and authorized specific relief. That records existed would not be challenged, and neither would the existence of evidence calling the accuracy of the records into question. What was lacking is a review of the challenged records, a review of the evidence, and an impartial hearing to determine whether the preponderance of evidence indicates that the records are false. Such a decision would naturally be unpublished, keeping it from the scrutiny of the legal profession, and the judge would enjoy absolute immunity whether or not the decision was in accord with the letter and spirit of the law. It should be obvious that the simple demands made of the judiciary by the Constitution were not followed. There was no due process, no fact-finding, no review by a jury, and different treatment given to the plaintiff than he would have received if he had been represented by a major law firm or an influential organization. The remedy in this case would be simply for a judge to follow the procedures outlined in the Constitution. The improvement of the treatment of pro se litigants would simply entail following the procedures spelled out in the Constitution and in the wording of the Privacy Act, itself. By not doing this, the judge was deliberately producing a chilling effect to keep other citizens from filing lawsuits under the Privacy Act. If any government agent maliciously creates a false record after a dispute with a citizen, the record must remain to mislead anyone who reads in the future. The Privacy Act has therefore been repealed at the whim of one judge without any allegation that the statute violates the Constitution in any way, and it is made clear that the repeal by judicial fiat applies only in the case of the one plaintiff and may be reversed in the next

decision if the plaintiff is deemed worthier by the judge. Equal treatment under the law therefore becomes another casualty of the court. Another example of a failure to meet the Constitutional mandates would be a lawsuit involving employment discrimination based on age. It is evident from the wording of the law and earlier decisions of the Supreme Court that proof of motive is irrelevant in such cases because motive can be implied from circumstances. If a government agency passes over the 50-year-old plaintiff in spite of his 25 years of relevant experience and high examination score in favor of a 30-year-old applicant with three years of experience and a low examination score, the decision should provide relief for the plaintiff unless the agency can show that there was a valid reason for the choice. However, judges routinely dismiss such cases without a jury trial on the defense of a simple denial by the agency, even though any ordinary person would consider the denial to be without merit and contrary to the fact presented in the documents filed with the court. Again, the decision is unpublished, and appeal results in a rubber-stamped affirmation. With absolute immunity, the judge has nothing to fear even though a clear issue of fact remained to be decided by a jury under the Constitutional formula, and he illegally usurped the functions of the jury to create a chilling effect on the public and thereby discourage other people from filing what he regards as litigation that is too time-consuming. In the examples given here, no problem exists with the laws cited, the issues are clear, and the relief is spelled out in the statutes. All submissions are timely, and no requirements for further fact-finding are recognized by the judge. The problem for the pro se litigants in such cases could not be remedied by better instruction on preparing submissions, assistance of law school students, or more helpful clerks. The problem is the failure of a judge to proceed according to common law and recognize the Constitutional rights of one of the litigants. It could only be remedied by making the judges follow established procedures

without allowing their own personal opinions or prejudices to interfere with due process.

VI. The search for remedies by the Task Force

The remedies to the problems not addressed by the Task Force involve changing the attitudes of judges toward litigants. While there are people who attempt to convince the court to make fundamental changes rightfully belonging to the legislative branch and others who use litigation for revenge or to vex an enemy, most people seeking the assistance of a court to settle a dispute do so because necessity demands it. Some people are forced to file several lawsuits because unscrupulous office holders are able to create multiple problems for them, motivated by personal dislike, political disputes, or a desire to obtain a coveted piece of property. The civil rights movement clearly revealed the extent to which officers of state and local government, including judges, are willing to go to violate the rights of individuals because of their political activities or because they belong to certain minorities. Federal courts are the last resort of many people who find themselves robbed of their fundamental rights. The remedies suggested by the Task Force might be sufficient if all judges and court officials were competent, honest, and incorruptible. If one judge does not live up to the high standards demanded of him, there must be some kind of machinery established to undo the damage he does. However, a litigant soon finds that if he is unfortunate enough to have his case assigned to a less than competent, opinionated, or dishonest judge, his chances for redress of his grievances have been eliminated even before the proceedings start. The eclipse of the jury trial as the main means of settling lawsuits has brought about a preponderance of "fast track" summary judgements, rubber stamped by inattentive appeals court judges, and deemed unworthy of consideration by the Supreme Court. Judges have made themselves impervious to complaints of misconduct and have even provided immunity to anyone employed by any government agency. The pro se

plaintiff is therefore left without legal, civil, or human rights for want of a means of having those rights recognized and upheld. Short of setting up an entirely new system of courts to pass judgement on the ones we already have, remedies will have to entail a more impartial treatment of lawsuits by judges. A person's social standing must no longer have an impact on a court's decision. The best way of preventing lawsuits from being rigged in favor of an influential or political powerful litigant is to leave decisions to a jury. If individual jurors are biased, there should hopefully be other jurors on the same jury who will hold different opinions. It is also much more difficult to influence 12 randomly selected citizens than it is to improperly influence one judge. Jury trials are made mandatory by the Constitution in most cases, so there is no reason for them to be denied short of a litigant's obvious failure to demonstrate any law that might authorize relief of any kind. The overriding factor that will eliminate almost all genuine problems faced by pro se litigants is a restoration of strict ethics and impartiality to members of the court. If a person's legal rights have been violated, it is an absolute duty of the judge to provide him with a fair hearing and every opportunity to present the evidence that he has. If the judge does this, allows the issues of fact to be decided by an impartial jury, and provides equitable relief to the prevailing party, the recommendations of the Task Force would be sufficient to provide fairness to pro se litigants. If, however, any judge fails to live up to his responsibilities, there must be another means of redress provided to correct the injustice created by the court when it denies due process. An oversight body would have to be sufficiently independent, unbiased, and competent to determine not only the merits of the original lawsuit but also the fairness of the presiding judge. A special grand jury composed of ordinary citizens might be established to pre-sort all lawsuits in order to recommend those that lack merit for early dismissal and refer all others to the judge for trial by jury.

It might also be given oversight of the actions of judges that may be prejudicial to one of the parties. An alternative to this would be to remove all civil immunity from judges. This might result in a flood of lawsuits against judges, but it would be a deterrent to unjustified dismissal of lawsuits prior to jury trial. Aside from obviously doctoring the evidence or giving the jury false information about the laws under which the lawsuit was brought, no failure by the judge could result in his being found liable for misconduct as long as he permitted the decision to be made by a jury. Other effective remedies might also be found, but it is suggested here that the Task Force should consider the worst case scenario, in which all judges handling the initial proceedings and the appeals fail to perform their duties in the prescribed way. It should then consider the best methods to **1)** uphold the litigant's legal rights by overturning the initial decision against him; **2)** take action against the judge who rendered the decision to prevent the incident from repeating itself during actions brought by other litigants; **3)** hold a trial by jury unless waived by all litigants; **4)** provide suitable relief, and **5)** see to it that the orders of the court are promptly carried out.

VII. Closing words

No demands are made here other than that the courts function as close to the system foreseen by the founding fathers as humanly possible. A decision for a lawsuit on the merits with consideration given only to the law and the material facts has become an unattainable dream for the majority of American citizens. Errors cannot be avoided, but it is the duty of all judges sitting on a court to minimize errors to the point that they become extremely rare. Many of the cases tossed out of the courts based on flimsy technicalities involve the life savings, health, or even the survival of one of the litigants. The Task Force is in an excellent position to insist on a review of the court's actions, and it should do so. If bias for or against members of any one group is found, swift action should be

taken to correct the injustice. In the long run, it will depend upon the court itself to determine whether or not it wants to bring justice under the law to all people who seek relief from it. If the court takes effective action, the improvement will surely quiet all criticism. If it does not, public indignation is sure to increase to the point that Congress will be required to take some decisive action.

Prepared by Charles W. Heckman, Dr. Sci. Submitted in behalf of: A Matter of Justice Coalition

"Frankly, I have had more than enough of judicial opinions that bear no relationship whatsoever to the cases that have been filed and argued before the judges. I am talking about judicial opinions that falsify the facts of the cases that have been argued, judicial opinions that make disingenuous use or omission of material authorities, judicial opinions that cover up these things with no-publication and no-citation rules." M. Freedman, Professor of Law and Distinguished Legal Scholar, Speech to The Seventh Annual Judicial Conference of the US Court of Appeals for the Federal Circuit (May 24, 1989), reprinted in 128 F. R. D. 409, 439 (1989). According to Prof. Freedman, immediately after his speech, a judge sitting next to him said "You don't know the half of it!"

American Justice Denied Responds to the Ninth Circuit Pro Se Task Force Report American Justice Denied ©2004

The Ninth Circuit Pro Se Task Force has asked for comments, suggestions and input regarding its proposed plan to incorporate the recommendations contained in its report concerning pro se litigants. Following are some comments, suggestions and concerns gathered from across the country from concerned groups and citizens. In addition we have included actual cases demonstrating how victims of judicial corruption end up filing appeals believing they will be treated fairly by the "cream of our judiciary." Some of the illustrations may "shock the conscience," but we are simply presenting the facts to illustrate why so many citizens are seeking redress from

inferior courts. While the Task Force views the problem as too many pro se litigants filing appeals, we view the problem as too many courts not following the United States Constitution, the laws, statutes, rules and regulations established to ensure justice. Furthermore, Federal courts are bound to feel the impact of federalization as Congress passes new laws that encroach upon state jurisdiction, and when those federal laws are violated in state courts, they cause new actions to be filed in federal court. To support our point of view, consider the mammoth undertaking required of a pro se litigant to file an appeal. The litigant, at this point, has had to endure being abandoned by his lawyer, suffered sever financial set backs, crippling emotional and physical damage, loss of self respect and being viewed by family, friends, peers and society as somehow guilty of something; because, heretofore, he has been unable to prevail. Why would anyone go through such an ordeal? The answer is simple. We recognize that we are victims of judicial corruption. The law begs for certainty, and that has been eliminated at the pro se's expense. Until the courts stop viewing us as disgruntled litigants, and perceive us as victims, the number of cases will continue to escalate. The appeal processes is long and arduous with the deck stacked against the appellant. We fully recognize that the courts are underpaid and understaffed, and for the public's sake that needs to be corrected; on the other hand, the Court has tried and failed to do budgeting at the further expense of pro se litigants. If the Court does not act soon, the problem is guaranteed to grow exponentially until the entire system collapses. We do not think the court fully appreciates just how soon that day may come with millions of new pro se litigants willing to tackle their own legal work. The Task Force need only surf the Internet to see how many judicial reform organizations are forming and connecting. There is a massive movement gaining strength, and determination. The Court can mend its ways and provide the justice promised under the United States

Constitution or The People will polarize the entire system and then take over and make the necessary corrections at all levels. The pro se appeals that the Court is experiencing are from the people who will not rest because they know that justice has not been served and will continue to return to court until it is. Least we forget these are Americans with the ingenuity, capability and tenacity to accomplish anything once challenged. While these people may be bringing a butter knife to a sword fight, they will do so with moral courage and dignity. Rest assured we are not "terrorists" as some have suggested. The Task Force seems to imply that all "pro-se" cases are basically alike and automatically require special treatment. Many of those people have already received outside help, and do file very professional briefs. They should not be penalized just because they are self-represented. We then turn to another group who may indeed need some form of help, but we hope the Task Force recognizes that an internal lawyer paid by the court, or clerk has an allegiance to the judicial system itself and a built-in bias, and a student is not likely to do anything that would disturb a grade. Consider also that pro se litigants may no longer trust lawyers, generally. Thus, we make the following suggestion. If the Task Force is sincere in wanting to correct the problem we suggest an autonomist organization that would be available to all of the people that could review the record and make suggestions in phrasing of the issues, and in the drafting of the brief. This organization could also inform the court when there are inherent underlying problems that have caused the litigant to return time and again for justice. With the use of colored paper on which a pro se appeal is filed, the entire course of the appeal could properly change the outcome when appropriate. There is an invaluable advantage to this proposal. Of utmost importance is the preservation of the court's time, and cost to everyone in pursuit of justice. However, let us be clear, ultimately, the public expects that each case will have the attention of an **Article III federal judge**; because, that is

what both the judge and the litigant have agreed. We do not agree that nothing can be done about judicial impropriety and that it is up to the judge to search his own conscience for his ability to be fair. It has been thus for twenty years, and corruption has exploded. Clearly, their consciences are not the slightest burdened; perhaps it is time for a change, and perhaps that change can only come through public involvement. In the past 20 years the courts have awarded undeserving judges unwarranted judicial immunity. Federal judges who have life time appointments have granted inferior state judges identical immunity no matter how egregious their conduct or how often they violate the Constitution. While it reduces the federal case load by summarily dismissing on immunity grounds, we know this was never intended by The People, and it causes multiple complaints and appeals. We also wish to point out that by taking this position, The People are prevented from ever making a public record to remove or vote out a bad judge from office once he becomes entrenched. Therefore, The People are stuck with a corrupt system. Society is paying a steep price where the rule of law is not respected by the judiciary. Court corruption is so prevalent that we must find a solution. We suggest that the Task Force hold public hearings and allow people to come forward and relate to it about the corruption they experienced and how it has affected their lives. The Task Force will soon see that most of the cases are the result of a lack of due process. No matter how the issues are addressed, the farce of judicial immunity plays a large part. For example, if someone is deciding cases without having qualified for his office, then he is not entitled to immunity, government protection and most of all, not retirement at public expense. A mere citizen who refuses to follow rules himself is not in a position to judge another. In his essay Judicial Immunity vs. Due Process: When Should a Judge Be Subject to Suit?" Robert Craig Waters states: "In the American judicial system, few more serious threats to individual liberty can be imagined

than a corrupt judge... Clothed with the power of the state and authorized to pass judgment on the most basic aspects of everyday life, a judge can deprive citizens of liberty and property in complete disregard of the Constitution. The injuries inflicted may be severe and enduring. Yet, the recent expansion of the judge-made exception to the landmark Civil Rights Act of 1871, chief vehicle for redress of civil rights violations, has rendered state judges immune from suit even for the most bizarre, corrupt, or abusive of judicial acts." (Emphasis added) When federal courts are called upon to provide protection against state court corruption, all of the Circuits must stop and listen and give justice where it is due. In so doing, judges at lower levels would soon understand that their mission is no longer "greed and corruption" as usual, but rather justice - and meaningful justice - for ALL because corruption is going to be in plain view of public scrutiny. As for the politics of unpopularity, rest assured that the public will be just as quick to defend a fair and honest judge as it would be to remove a dishonest one. Finally, and perhaps most importantly, self-represented litigants love their country and are proud of what was once the finest justice system in the world. They share the notion that they are entitled to the freedom they pay for at home while judges and lawyers are teaching "democracy" and "justice" overseas. They believe America still operates on the rule of law in accordance with the United States Constitution. While our sons and daughters risk their lives to bring this system to other nations, we must not allow it to slip away on our own soil in the process; we thank this Task Force for its interest and recognition and its desire to help. We do hope the Task Force will hold public hearings. APPENDIX The following are just a few examples of the injustices perpetrated on unrepresented litigants. As these notes illustrate, disparate and unlawful treatment has been systemic throughout the nation for years.

· Whistle Blower, Airline Captain Craig Friday's children are attorneys, who drafted his pro se appeal and it was dismissed at the direct expense of public air safety. Litigation is still pending in other jurisdictions.

· FAA Flight Inspectors James F. Gibson and second year law student, James E. Norris' consolidated cases of employment racial discrimination with solid evidence were dismissed. · One judge asked plaintiff Clinton Tullis, "Why don't you stay out of law, and I'll stay out of real estate?" The judge is now a federal district judge; he dismissed this case with government witnesses providing solid evidence of perjury.

· "Commissioner" Peter L. Shaw, a title which is not known to exist in the Ninth Circuit Glossary term for his job title routinely disposes of Appeals with a rubber stamp. Attorney James L. Martin has perhaps the longest running case in history (thirty-three years) a portion of which has been placed in limbo by Shaw after he conducted a phone hearing two years ago.

· On December 20, 2004, after four years of litigation and being wrongfully jailed for expressing her First Amendment rights, all charges against reporter June Maxam were dismissed by Special District Attorney Mary Moule stating that she "could not go against the Constitution." Maxam was convicted in May 2000, and served a 9-month jail term on false charges which have now been ruled unconstitutional.

· On May, 22, 2003, Senator Saxby Chambliss, U.S. Senate Judiciary Committee gaveled down a public hearing without asking for questions, so Elena Sassower stood and respectfully asked if she could give testimony of judicial corruption by a state court judge being considered for the federal bench. She was immediately arrested, tried and convicted of "disruption of congress" and sentenced to six months in jail. She was released on Dec. 24, 2004.

· Airline Captain Joseph S. Norman, II wrongly included on a scab list for an airline where he never worked, even

temporarily. When he requested to be removed the court refused and the Eleventh Circuit concurred with the lower court. Mr. Norman has recently written to Congressman Sensenbrenner regarding judicial complaints and oversight and awaits his reply.

· The Court, in its supervisory capacity, refused to enforce its own orders on certiorari to a Circuit which failed to obey its clarification of Federal Rules of Civil Procedure and requirement for an adversarial disposition of an action on the merits, as opposed to dismissal at the pleading stage. Duboys v. Bomba, U.S.S.C. #03-100642, 10/4/04 Cert. Den. No reason given.

· Rick Stanley was arrested for open-carry of a weapon. While in jail, Governor Owens signed a bill that pre-empted the ordinances used for the conviction as null, void and unenforceable, retroactive to the date of its enactment. Stanley filed court papers to set the record straight, and this time was arrested for "influencing a public officer." He was sentenced to six years on two felony charges. Appeal pending. See the Peter Mancus' Independent Memo http://www.stanley2002.org

· In 1995 Linda Fogh, by lack of service of process a contract was impaired by judges sitting without the proper oath, or in some cases, any oath of office. The court records are rife with fraud, eventually leading to her bankruptcy; wherein the trustee paid a bribe to the bankruptcy judge's relative to cover it up. It took Fogh thirty years to build the equity which the trustee squandered in part and consumed the rest for her own fee in 198 hours. Appeal Pending.

· In January 1996, James Keenan filed Chapter 11 reorganization to cover a large judgment then on appeal. His few debts were paid four years ago, but the trustee and his representatives (with the full approval of a bankruptcy judge) have looted the estate of nearly $14 million dollars. They refuse to give up their gravy train by returning $40 Million estate to its rightful owner according to the federal law. As a result, Mr.

Keenan was never allowed his appeal, and his business acumen is being withheld from the City and County of San Diego through the loss of jobs, low income housing, and other infrastructure.

· Donna Sturman's $25 million share of a probate estate was sucked out of surrogate's court into a Chapter 7 bankruptcy by a judge with several clearly established conflicts of interest, and fed to the lawyers, despite lack of jurisdiction by reason of fraud, and contrary to a surrogate's existing order. When Ms. Sturman complained, the judge made the chilling statement on the record: "Money talks: and when asking for release of funds to feed her children, Donna was told: "It's Christmas, go play a violin on the sidewalk!"

· Union County NJ. Judge John Boyle's, family does business with major land developer Joseph Wilf. In order to help Joseph Wilf to Cynthia Jampel's detriment, the judge ignored an existing signed court order and falsified a new order by changing the terms and by back dating it to cancel the existing order."

· We take this opportunity to remember Pamela Gaston of Oregon whose daughter was summarily taken from her home six years ago on false charges. While both parents were completely exonerated, they have not been able to find there daughter and have her returned to them. After years of fighting in the courts that consumed all of their resources, they could no longer afford medical care. Pamela died in a small trailer on the top of a mountain in Oregon on December 20, 2004. The Circuit was informed that as of 2000, the entire State of Oregon had exactly ONE judge with the proper oath of office.

(This is an example of "Justice – Oregon Style.")"

Supreme Court, U.S.
FILED

05 - 708 NOV - 9 2005

OFFICE OF THE CLERK

No.

In The
Supreme Court of the United States

United States of America, and;
State of California, and;
ex rel. Miro J. Satalich,
Petitioner(s),

v.

City of Los Angeles
Respondent.

On Petition For Writ Of Certiorari to the United States Court of Appeals for 9th Circuit

PETITION FOR WRIT OF CERTIORARI SUPPLEMENTAL APPENDIX

Miro J. Satalich, Pro se
P.O. Box 93314
Phoenix, Arizona 85070-93314
(480) 283-0355

SUPPLEMENTAL APPENDIX
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CLERK, U.S. DISTRICT COURT
NOV 18, 2004
CENTRAL DISTRICT OF CALIFORNIA
BY S/Initial DEPUTY

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

THE UNITED STATES OF AMERICA, ex rel. MIRO SATALICH,
Plaintiff,
v.
THE CITY OF LOS ANGELES,
Defendant.

Case No. CV-OO-8882 GAF (PLAx)
Defendant. MEMORANDUM AND ORDER REGARDING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

DOCKETED ON CM
NOV 22, 2004
BY Initial 012

I.
INTRODUCTION

This is a qui" tam action in which Plaintiff, Miro J. Satalich, a former Wastewater Electrician for the City of Los Angeles ("the City" or "Defendant"), claims that the City and various independent contractors conspired to violate a number of federal statutes including the False Claims Act ("FCA"), 31 U.S.C. § 3729, et seq., in connection with the renovation and operation of the Hyperion Wastewater Treatment Plant. On August 31, 2001, the Court dismissed Plaintiff's § 3729(a) "qui tam" claims against the City on the ground that a municipality

is not a "person" that can be sued

under that statute. Almost two years later, on July 8, 2003, Plaintiff filed a motion seeking to vacate the Augus. 31st order based on an intervening United States Supreme Court decision holding that a municipality is a "person" under the FCA. Court granted Plaintiff's motion. As all of Plaintiffs other claims have been disposed of in the four years since the case was filed, the only remaining claims against any defendant in this action are the revived qui tam claims against the City. These claims were alleged in the original August 22, 2000 complaint.

Now pending before the Court is the City's motion for summary judgment on the revived claims. Defendant asserts that: 1) Plaintiff has failed to provide any affirmative evidence of the City's submission of a false claim in violation of the FCA; and 2) even if there were violations they would be barred by the controlling statute of limitations. Because the Court finds that Plaintiff has failed to submit any evidence of a false claim, the City's motion for summary judgment is **GRANTED.**

II.
BACKGROUND

A. FACTUAL BACKGROUND

On June 19, 1987, United States District Judge Harry Pregerson signed a consent decree that settled litigation between the United States and the City of Los Angeles in which the federal government accused the City of discharging untreated sewage into Santa Monica Bay. An amended consent decree ("ACD") required the City to hire and train a certain number of plant operators, maintenance workers, and engineers to address the problem.

From March 30, 1987 to May 10, 1995, when much of the work called for was performed, Plaintiff, Miro J. Satalich, was

employed at the Hyperion Wastewater Treatment Plant. (Compl. ¶ 24). In this position, Plaintiff claims to have observed evidence of fraud against the United States perpetrated by the City and independent contractors Metcalf & Eddy Services ("Metcalf"), Marie C. Scully Group ("MCS"), and Kiewitt Pacific Company ("Kiewitt") hired to assist the City in carrying out the ACD.

Although the specifics of Plaintiff's claims are unclear, he appears to allege that the City knowingly allowed the contractors, paid with federal funds, to cut corners in the fulfillment of their contracts. (Id. ¶ 41). For example, Plaintiff alleges that the City allowed Metcalf to deliver less property and training than required by the ACD, submit "plagiarized" maintenance training lesson plans, and fail to develop a comprehensive training program as required by the ACD. (Id. ¶¶ 33-34).

Plaintiff also alleges that the City allowed MCS to submit inferior and outdated lesson plans and fail to produce adequate training manuals. (Id. ¶ 39). Plaintiff claims that numerous city officials were aware of the alleged fraudulent activities but all adhered to an "unwritten code of silence." (Id. ¶ 40).

B. PROCEDURAL BACKGROUND

Plaintiff filed this action pro se on August 22, 2000, naming as defendants the City, Metcalf, MCS, and Kiewitt. On August 9, 2001, the Court dismissed all of Plaintiff's claims brought against Kiewitt and Metcalf; Plaintiff filed a first amended complaint that deleted MCS from the case. Thereafter the City was the only remaining defendant.

In its Orders of August 28th and 31st, 2001, the Court dismissed all but one of Plaintiff's claims against the City.

Significantly for the purposes of the pending motion, the Court dismissed with prejudice Plaintiff's qui tam claims under the FCA, on the ground that the City was not a "person" within the meaning of the statute. After these orders, the sole causes of action in the case were against the City claiming violations of the "whistle blower" statute, 31 U.S.C. § 3730(h) and retaliation.[1] On June 6, 2003, the Court granted the City's summary judgment on these remaining claims on the ground that they were barred by the applicable one year statute of limitations. That order closed the case.

Subsequently, on July 8, 2003, Plaintiff filed a motion seeking to vacate the Court's August 31, 2001 order dismissing the qui tam claims against the City on the basis of an intervening United States Supreme Court decision holding that municipalities are in fact "persons" under 31 U.S.C. § 3729.[2] On August 11, 2003, the Court granted Plaintiff's motion and vacated the August 31, 2001 order, thus reviving Plaintiff's previously dismissed FCA claims.

At the time the Court reopened this action, the City argued that even if it is a "person" that can be sued under the FCA, Plaintiff's claims against it were likely barred by the statute of limitations. The Court refused to consider this argument in the context of a motion to vacate judgment, but on October 6, 2003, set a schedule for three months of discovery to determine whether Plaintiff had any claims that could survive the applicable statute of limitations. The parties then stipulated to extend the date to March 2004, for a total of five

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[1] Plaintiff retained counsel on December 20,2001 but substituted himself as attorney once again on January 28, 2004.

[2] See Cook County, Ill. v. U.S. ex rel. Chandler, 123 S. Ct. 1239 (2003)

months of discovery on this narrow issue.

On April 12, 2004, the City filed for summary judgment asserting that: 1) Plaintiff failed to provide any affirmative evidence of the City's submission of a false claim in violation of the FCA: and 2) even if there were violations they would be barred by the controlling statute of limitations. After receiving Plaintiff's opposition to summary judgment, on April 28, 2004, the Court issued a detailed minute order advising Plaintiff of the necessary elements of an FCA claim and that his opposition failed to address those elements. Specifically, the Court explained that Plaintiff had failed to produce evidence that any false claim for payment was actually submitted to the federal government by the City. In consideration of Plaintiff's pro se status, the Court allowed Plaintiff to submit supplemental briefing to prove his case.

Now over six months later, after numerous requests for stays, to reopen discovery, and "objections," the Court is in receipt of Plaintiff's supplemental opposition as well as the City's response thereto. [3]

III.
DISCUSSION

A. THE LEGAL STANDARD FOR SUMMARY JUDGMENT

Under the Federal Rules of Civil Procedure, summary judgment is proper where "the pleadings, depositions, answers

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[3] In its reply, the City asserts that Plaintiff failed to comply with procedural rules because it received the opposition two days late, limiting its reply time. However, as Plaintiff's opposition fails to point the Court to any evidence of an FCA violation, it is unclear that Defendant's reply even with the full time could have added anything substantive to the discussion.

to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Thus, when addressing a motion for summary judgment, this Court must decide whether there exist "any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). The moving party has the burden of demonstrating the absence of a genuine issue of fact for trial. Id. at 256. A party opposing a properly made and supported motion for summary judgment may not rest upon mere denials but "must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). In particular, when the non-moving party bears the burden of proving an element essential to its case, that party must make a showing sufficient to establish a genuine issue of material fact with respect to the existence of that element or be subject to summary judgment. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

To survive summary judgment in a qui tam action under the FCA, a plaintiff must present material questions of fact as to whether "(1) defendant[ ] made a claim against the United States (2) that was false or fraudulent (3) with knowledge of the

falsity or fraud." United States v. Kitsap Physicians Serv., 314 F.3d 995, 1000-01 (9th Cir. 2002) (citations omitted). To meet this standard, Plaintiff must establish that a claim for payment was submitted to the federal government, because "evidence of an actual false claim is "the sine qua non of a False Claims Act violation." Id. at 1002.

B. PLAINTIFF HAS FAILED TO PROVIDE ANY EVIDENCE OF SUBMISSION OF A FALSE CLAIM

The City's original motion states that Plaintiff "has not specified -- in his complaint or elsewhere -- any discrete acts or omissions that he contends violate 31 U.S.C. § 3729, has not alleged how and why, if at all, any such discrete acts violate 31 U.S.C. § 3729 and, most particularly, has not specified when any such discrete acts occurred." (Mot. at 1) (emphasis in original). Plaintiff's supplemental opposition also fails to do so. In fact, it consists of nothing more than a series of "objections" to the Court's previous orders.[4] Nevertheless, the Court will address each one in turn.

1. Objection to Denial of Plaintiff's Requests to Stay the Proceedings

Plaintiff, once again asserts that the proceedings should be stayed pending the outcome of his untimely appeals to the Ninth Circuit because the Court is "discouraging the Plaintiff from appealing to a higher Court." (Supp. Opp. at 2, 4). Plaintiff offers no authority for this assertion. Therefore, as stated in the Orders of October 22nd, 29th and November 4, 2004, the Court will not stay the proceedings.

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[4] Plaintiff claims that the Court is not timely responding to his numerous filings. (Supp. Opp. at 4). Plaintiff has filed an "objection" to almost every Order issued by the Court in the last month, most of which are merely responses to his other "abjections.. These filings are not made according to the motions calendar and most are filed without response from Defendant. Nevertheless, the Court has responded to Plaintiff's filings in a timely manner in order to move this case forward. See Order of October 22, 2004 responding to October 12, 2004 filing; Order of October 29, 2004 responding to October 22, 2004 filing; Order of November 4, 2004 responding to November 1, 2004 filing. Any delay in receipt of these Orders is due to the fact that Plaintiff lives in Arizona and chose to file this action in California. This is not the Court's concern.

2. Objection to Denial of Plaintiff's Requests to Reopen Discovery

Plaintiff argues that he is unable to submit any evidence of false claims because he was not afforded adequate discovery and/or the City refused to provide him with the necessary documents. (Supp. Opp. at 2). The Court ruled on these arguments in detail in its Order of August 30, 2004. These arguments are as devoid of merit now as they were then.

On the issue of the adequacy of discovery, Plaintiff argues that the Court only allowed discovery on the applicable statute of limitations, not on any alleged FCA violations. The Court's October 6, 2003 Order allowed discovery "as to the subject of of merit now as they were then. the materials relating to the statute of limitations question." [5] As the Court explained to Plaintiff in its August 30, 2004 Order responding to Plaintiff's request to reopen discovery,

> Plaintiff's objection reveals a fundamental misunderstanding of what the "statute of limitations" issue in the case represents. . . . Clearly, the number of years is a valid issue that must be determined, however, that is a legal issue. There is no need for discover on this point. The reason the Court reopened discovery was for the purpose of determining if Plaintiff has any qui tam claims that could possibly survive any applicable statute of limitations.

See Order of August 30,2004 at 3.

In addition, this Order explained in detail that the City

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[5] The Court notes that Plaintiff was represented by counsel during this time.

had complied with all properly made discovery requests and denied Plaintiff's motion to reconsider the magistrate judge's ruling on the issue. Id. at 5-6. The record shows that the City presented Plaintiff with seventeen binders of billing records containing all documents relating to projects at the Hyperion Wastewater Treatment Facility either partially or wholly funded by federal grant monies that related to Metcalf, MCS or Kiewit, the three independent contractors allegedly allowed to cut corners in the performance of their contracts. (Cramer Decl. ¶¶ 1-8; Mowery Decl. ¶¶ 2-9).

Contrary to Plaintiff's assertion that "the City did not prove to him or to this Court, that in fact these were not federal funds" (Opp. at 8), it is Plaintiff who has the burden of proof to establish a prima facie case of the submission of false claims. Celotex, 477 U.S. at 322. As the Court repeatedly advised, Plaintiff is required to make a showing sufficient to establish a genuine issue of material fact with respect to the existence of the elements of his claim or be subject to summary judgment. Id. Plaintiff claims that forcing him to come up with evidence to prove his case is "a cruel joke and a hoax on Plaintiff by placing an unreasonable and impossible demand to come up with evidence." (Supp. Opp. at 3). While it may indeed be "impossible" if no false payments were actually made, it is not a "cruel joke and hoax" but simply the law.

IV.
CONCLUSION

Accordingly, because Plaintiff has failed to submit any evidence to support his last remaining cause of action, the Court **GRANTS** Defendant's motion for summary judgment.

IT IS SO ORDERED.

DATED: November 18, 2004

S/_____
Judge Gary Allen Feess
United States District Judge